THE CHINESE FAMILY SYSTEM

BY

SING GING SU, M. A., Ph. D.

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SING GING SU, M. A., Ph. D.

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TO

MY FRIENDS

EDWIN C. JONES

AND

ROBERT T. JONES

ERRATA

Page 13, line 18, instead of *Fu-shi* read *Fu-hsi.*

Page 14, footnote 5, line 2, instead of *2875* read *2852.*

Page 19, footnote 22, read *Sociology and Modern Social Problems.*

Page 22, footnote 30, line 3, instead of *Tu-Tsing* read *Ta-Tsing.*

Page 102, line 38, instead of *Mayer* read *Mayers.*

Page 103, line 28, read *Sociology and Modern Social Problems.*

Page 104, line 8, instead of *Giraud, Teulon* read *Giraud-Teulon.*

Page 110, column 2, line 23, instead of *low* read *law.*

Page 111, column 1, line 8, instead of *proibiting* read *prohibiting;* line 29, instead of *Ta-sing* read *Ta-Tsing;* line 43, instead of *autority* read *authority.*

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PART I.

The History of the Chinese Family System

Introduction

China is changing. In a metamorphosis that bids fair to be universal, the family, that ancient and hitherto unalterable basis of Chinese society, is undergoing marked transformation. Part of the change is the more or less mechanical resultant of the combined action of a great number of impersonal and unperceived forces; a greater part is the result of conscious readjustments and rational social control.

For many hundreds of years the Chinese family system worked satisfactorily among millions of people. Now the machinery does not seem to run as smoothly as it did a century ago, and in recent years there has been considerable agitation in China for reform.

The transformation of a basic social institution is fraught with far-reaching and often dangerous consequences. Never before has there been greater need of a clear-sighted view of the Chinese family system. The object of this study is to describe with scientific accuracy, clearness, and simplicity the nature and functioning of the Chinese family system, past and present. It is not an exhaustive study. It aims to embody only enough of the more important facts to constitute a comprehensive view of the Chinese family system as a whole. Throughout the thesis, precedence is given to facts and processes rather than to theories and hypotheses. Equal emphasis is placed upon the bad and the good features of the Chinese family system, for both its successes and failures are of value, either as examples to be copied or as mistakes to be avoided. Above all else the author seeks to furnish reliable data which will help solve the problem of family reform in China and serve as a scientific background for practical policies of control.

The present is clearly discernible only in the light of the past. Any worth-while judgment of an existing social institution presupposes knowledge of its origin and evolution.

Pursuant to this view the first three chapters of this study deal with the salient features of the ancient Chinese family, its origin and development. The main body of the monograph is devoted to a scientific description of the Chinese family of today. The concluding chapter is an attempt to evaluate the Chinese family system upon the basis of the facts presented in the previous chapters. This evaluation is a matter of individual judgment. Its validity must be attested by the reliability of the data upon which it is based and the correctness of the inferences therefrom.

Materials presented in the following pages are drawn from a great variety of sources. The chief primary sources[1] are: (1) Chinese ancient history; (2) ancient poems and folk-songs; (3) ancient laws and customs described in the ancient classics of Chinese Literature; (4) Chinese laws and statutes of different dynasties; (5) the present civil and criminal codes of the Republic of China; (6) personal observations. Secondary sources[1] are the works of various authors on different phases of this subject and allied subjects.

[1] See bibliographical appendix to this monograph.

CHAPTER I

The Chinese Family System in the Making

"Before there were husbands and wives there must have been simply people living upon the earth; before there were fathers and sons there must have been husbands and wives; before there were brothers and sisters there must have been parents and children. These relations, between husband and wife, between parent and child, between child and child, are the principal family relations. From them one extends his relationship to other members of the family unto the ninth class[1] of his kindred".[2] In this brief description of its structural aspect, we find the underlying principle of the Chinese family system.

What was the origin of the husband-wife relationship in China?

The ancient Chinese, like the ancients of most other races, believed that the institution of marriage was first established by a legendary ruler.[3] According to ancient Chinese historians and writers, the institution of marriage was established by Fu-shi, first of the three legendary Augusti,[4] 2852-2738

[1] These members are all the consanguineous relations from the great-great-grandparents to the great-great-grandchildren on the father's side. See *Shu King Choo Soo* (*Book of History, with a commentary and exposition*), "Canon of Yaou."

[2] Yen Chih Pan's *Family Instructions*, in Chinese, vol. I, chapter on "Brotherhood."

[3] It was believed that Swetaketu first formulated the rules of marriage for ancient India; Kekrops for the ancient Greeks; Njavvis and Attjis for the ancient Laplanders; while the ancient Egyptians believed that they were indebted to Menes for the institution of marriage. See Westermarck, *History of Human Marriage*, p. 8.

[4] *Chu Shu Ke Neen T'ung Tseen* (*Annals of the Bamboo Books*), pt. I, chap. I; *Yih She* (*History of China from the Earliest Times Down to the End of the Tsin Dynasty*, 203 *B.C.*), vol. III, leaves 1-3 inclusive; *Peh Huo T'ung* (*A Collection of Essays on Various Social Institutions*), vol. I, chap. I; *Loo She* (*The Great History* [*of China*]

B. C.[5] They tell us that before, and to some extent during, the time of Fu-hsi there existed none of the three primary family relationships. The sexual life of human beings differed but slightly from that of animals. Children knew only their mothers; paternity was unrecognizable in the maze of promiscuity.[4] According to Confucius' version of this period of antiquity, people "in winter lived in caves which they had excavated; in summer, in nests which they had framed. They knew not yet the transforming power of fire, but ate the fruits of plants and trees and the flesh of birds and beasts, drinking their blood and swallowing also their hair and feathers. They knew not yet the use of flax and silk, but clothed themselves with feathers and skins".[6] It was in this primitive stage that Fu-hsi "examined the natural orders of heaven and earth and established the proper relation between husband and wife".[7]

Another authority asserts that it was Nu-Wa, the Augusta succeeding Fu-hsi, who used divination to determine whether a certain man and woman should be united as husband and wife, and that thereby the institution of marriage was established.[8]

from Antiquity to 1766 *B. C.*), pt. I; Hirth, *Ancient History of China*, p. 9; and Gowen, *Outline History of China*, p. 25.

[5] Different dates are given by the following writers: Mayers (*The Chinese Reader's Manual*, p. 366), 2875-2738 B. C.; Giles (*A Chinese Biographical Dictionary*, p. 233), 2953-2838 B. C.; Arendt ("Synchronistische Regententabellen, etc.," in *Mittheilungen des Seminars für Orientalische Sprachen*, Jahrgang, II, 1899, p. 216), 2852-2738 B. C. Professor Friederich Hirth in *The Ancient History of China* follows the last named work for his chronological data. See *The Ancient History of China*, p. 7. Chronological data in this monograph follow Professor Hirth's work.

[6] *Li Ki* (or *Canon of Rites*), translation by James Legge, bk. vii, secs. 1, 8. *Cf.* also description of Fu-hsi: "Before his time the people were like unto beasts, clothing themselves in skins, and feeding themselves on raw flesh, knowing their mothers but not their fathers."—Mayers, *Chinese Reader's Manual*, p. 48.

[7] See footnote 4.

[8] *Fong Suh T'ung* (*Inquirer Into Manners and Customs*), chapter I.

We find, in Chinese literature of many different periods, no other noteworthy accounts of the origin of marriage in China. Although the opinion long prevailed among Chinese scholars that an edict of Fu-hsi established the institution of marriage, and though this opinion is still held by a few modern Chinese writers on the subject, it is quite impossible for us to accept an anthropomorphic explanation as scientific. Important social institutions like human marriage are not established suddenly and arbitrarily by one person. They emerge and develop in an infinite process of gradual evolution. Westermarck has well said that "popular imagination prefers the clear and concrete; it does not recognize any abstract laws that rule the universe. Nothing exists without a cause, but this cause is sought in an agglomeration of external and internal forces; it is taken to be simple and palpable, a personal being, a god or a king. It is natural, then, that marriage, which plays such an important part in the life of the individual, as well as in that of the people, should be ascribed to a wise and powerful ruler or to direct divine intervention".[9] Whatever its evolutionary antecedents, it is quite probable that marriage was an established and recognized social institution in China as early as the time of Fu-hsi, 2852-2738 B. C.

Many facts are available in Chinese literature and history for the study of the primitive Chinese family system and for a scientific description of its evolution through many ages to its present form. We are reasonably sure that from the time of Fu-hsi, to the days of Yaou and Shun, 2357-2206 B. C., there existed a metronymic family relationship. Children knew only their mothers.[10] This can be established by historical and etymological facts. The ancient rulers, Shen-Nung, 2737-2705 B. C., third and last of the three Augusti after Nu-Wa, and Hwang-ti,[11] 2704-2595 B. C., first of the

[9] *History of Human Marriage*, p. 9.

[10] See footnote 4.

[11] The Chinese historian, Sze-Ma Tsien, known as the "Herodotus

Wu-ti, or five emperors after Shen-Nung, were both descendants of Shau-tien, but bear different surnames. The surname of Shen-Nung is Kiang,[12] while that of Hwang-ti is Ke.[12] According to the concurrent explanation of various historians, Hwang-ti's surname was Ke because he was living with, and brought up by, his mother near the river called Ke where his mother's family dwelt.[12] An even more striking fact is that there is a character in each of the surnames of these ancient rulers, meaning "female" or "woman." The same thing is true of the surname of Yaou, fourth of the "five emperors" of ancient China. Yaou's surname is Ye-chi, which is his mother's surname.[12] Furthermore, the Chinese word for "surname" is composed of two characters, meaning, respectively, "woman" and "born," or "beget." Chinese etymologists, commenting on these facts, explain that the surname was originally the mother's name only.[13]

Another significant fact may be mentioned here. In the *Annals of the Bamboo Books,* containing the biographies of ancient rulers,—Hwang-ti, Che, Chuen-heuh, Kuh, Yaou, and Shun,—parentage was recorded not in the name of the father but in that of the mother, with the exception of the Emperor Kuh, in which case the name of neither parent was given. We find in the *Bamboo Books* such sentences as "His mother was named so and so" or "His mother was called so and so," and in not a single instance is the name of the father mentioned.[14]

From these historical and etymological facts we can con-

of China," commenced the history of China with Hwang-ti. His *Historical Records* were written 90 B. C. from materials collected by his father. A translation into French has recently been published by M. Chavannes. (See bibliographical appendix to this monograph.)

[12] Sze-Ma Tsien, *Historical Records*, vol. I, bk. I.

[13] *History of Chinese Customs*, pt. I, chap. I, sec. 6.

[14] *Chu Shu Ke Neen T'ung Tseen* (*Annals of the Bamboo Books*) These are said to be the oldest records of Chinese history. *Cf. Historical Records*, pt. I, bk. I.

clude with practical certainty that the Chinese family system in the first stage of its development, during the period before, and for some time after, the dawn of Chinese civilization, i.e., during the days of Yaou and Shun, was metronymic.

What were the causes of the metronymic family system in ancient China? There were possibly several causes,[15] but the available data warrant the unqualified acceptance of only one. This was the erroneous idea of the nature of childbirth. The ancient Chinese attributed conception to the influence of supernatural agencies rather than to a physiological relation between man and woman. The mothers of the Wu-ti, for instance, attributed their pregnancies to the effects of lightning, stars, dragons, or spirits. Hwang-ti's mother became pregnant after "she had witnessed a great flash of lightning, which surrounded the star *ch'oo* of the Great Bear with a brightness that lightened all the country about her"; and "after twenty-five months she gave birth to the emperor (Hwang-ti) in Show-k'ew".[16] Emperor Che's mother bore him because "she beheld a star like a rainbow"; Emperor Chuen-heuh's mother brought him forth because "she saw the Yaou-kwang star"; Yaou's mother gave birth to him because "the red dragon made her pregnant"; Shun's mother conceived and bore him because "she saw a large rainbow, and her thoughts were deeply affected by it"; and the Great Yu's mother gave birth to him because "she saw a falling star, which went through the constellation *Maou;* and in a dream her thoughts were stirred till she became pregnant, after which she swallowed a spirit's pearl".[16]

[15] Howard, *A History of Matrimonial Institutions*, vol. I, chap. II, pp. 40-46; 58-60; 77, *et seq;* and chapter III, sec. II, "The Problem of Mother Right," pp. 110-116; *cf.* also Starcke, *The Primitive Family in Its Origin and Development*, pp. 10-25; 244-246; 283-4; 51 and 52; McLennan, *Studies in Ancient History*, vol. I, chap. 8, pp. 83-146. And his *Patriarchal Theory*, chap. XIII; Morgan, *Ancient Society*, pp. 348-350, *et seq.;* Spencer, *Principles of Sociology*, vol. I, pp. 647, 665 and 666, *et seq.;* Westermarck, *op. cit.* pp. 107-113; Giddings, *Principles of Sociology*, pp. 259, *et seq.*

[16] *Annals of the Bamboo Books*, vols. I and II, *passim*; *Historical Records*, pt. I, bk. I. *Cf.* also Hartland, *Primitive Paternity, the*

These entries read like fairy tales for children, but they were seriously recorded, carefully preserved and formally handed down among the Chinese for generations. They reflect clearly the primitive idea of the causation of childbirth.

From them we may safely infer that the chief cause, if not the only cause, of the metronymic family system in ancient China was the ignorance of the physiological connection between father and child.[17] The physiological relation between mother and child was self-evident. That the child was of the mother's blood was a natural and logical deduction; that the father played no part in reproduction was an almost unavoidable fallacy. Children, therefore, took the mother's name, and genealogy was reckoned on the maternal side.[18]

By the time of Yaou, the fourth of the Wu-ti, 2357-2258 B. C., the family system in China had greatly developed. The authors of the *Shu-king* tell us that "Yaou was able to promote affection and love among the nine classes of relations",[19] and all lived harmoniously in the family group.[20]

The family of this period was unmistakably patronymic. There are no facts available in Chinese literature or history

Myth of Supernatural Birth in Relation to the History of the Family (Publications of the Folk-Lore Society, LXV and LXVII) particularly vol. I, chapters 1, 2, 3 and 4.

[17] "Such ignorance is by no means so incredible as at the first blush it may appear. It is of a piece with the ignorance and misconception relating to man's nature and environment and his position in the universe, prevalent in all but the highest culture. Comprehension of the process of birth, as of all other natural processes, can only be attained by close, patient and unprejudiced observation. Observation of that kind was, for many ages, beyond the power of mankind"; *et seq.* Hartland, *op. cit.*, vol. II, pp. 250-251.

[18] For other causes of the metronymic family system in ancient China, concerning which I have not been able to find sufficient trustworthy data for scientific generalization, see the references given in the footnote 15.

[19] *Vide* note 1.

[20] *Shu King*, pt. I, chap. I, sec. 2; and *Mencius* (*Meng Tsze*), bk. III, pt. I, chap. IV, secs. 1-4.

which can be organized into an accurate and complete description of the transition from the metronymic to the patronymic type of family. Modern writers on the institution of the family explain such an evolutionary change in terms of various causes.[21] Professor Ellwood summarizes them in four chief factors: (1) war; (2) wife purchase; (3) development of the pastoral stage of industry; (4) ancestor worship.[22]

War may have been one cause of the breakdown of the metronymic system in ancient China, through the fact that women, being the physically weaker sex, were captured in war, held as slaves, and then made wives or concubines by their captors;[23] but wife purchase as a cause seems rather improbable. Under the metronymic system in China women generally occupied the higher social and political positions, and wife purchase was rather unlikely. If there ever was any wife purchase in China, in my own judgment, it was an effect rather than a cause of the breakdown of the metronymic system. The supposition that the marriage present in China is "a survival"[24] of the price paid for a wife, is without the slightest foundation in fact. The oldest form of the marriage present was the skin of a deer which was used as a

[21] See note 15.

[22] *Sociology and Social Problems.* pp. 83-85; *cf.* also Spencer, *Principles of Sociology.* 1897 edition, vol. I, chap. IX, "The Family," pp. 687-724; and Giddings, *Principles of Sociology.* pp. 285-290.

[23] Discussing wife capture in China, Mr. Jamieson says, "Of the capture of wives there is, as far as I am aware, historically no trace, nor is the form to be found among any of the ceremonies of marriage with which I am acquainted." *China Rev.*, vol. X, p. 95.

[24] "In China, a present is given by the father of the suitor, the amount of which is not left to the goodwill of the parties, as the term 'present' would suggest, but is exactly stipulated for by the negotiators of the marriage; hence, as Mr. Jamieson remarks, it is no doubt a survival of the time when the transaction was one of ordinary bargain." (*Vide China Rev.*, vol. X, p. 78.) Westermarck, *History of Human Marriage,* pp. 394-395. *Cf.* also Möllendorff, *Das chinesische Familienrecht, pp.* 21 and 23, *passim.*

token of betrothal.[25] It had no more monetary value than the college diploma made of sheepskin has today.

Neither can the development of the pastoral stage of industry be assigned as a cause of the transition from metronymic to the patronymic system in China. Careful study of the industrial life of the primitive Chinese people shows clearly that the first stage was pastoral and that the metronymic type of family flourished in the agricultural stage which followed.

All the available facts and all valid inferences from the facts do not bear out the contention that ancestor worship contributed to the breakdown of the metronymic system in China. Ancestor worship is generally the worship of male ancestors. It is extremely doubtful that under the metronymic régime male ancestors were worshipped in China. Ancestor worship, as a general rule, and particularly in the

[25] "(Fu-hsi, 2852-2738 B. C.) examined the natural orders of heaven and earth and established the proper relation between husband and wife, and commanded that the skin of the deer be used as a token of betrothal." *Yih She* (*History of China from the Earliest Times Down to the End of the Tsin Dynasty*, 206 *B. C.*), vol. III, leaves 1-3.

During the period of Yaou and Shun, 2357-2206 B. C., we find no trace of the marriage present. In its place we find the large marriage dowry consisting of "oxen, sheep, storehouse, and granaries." (See *infra*, p. 23.) During the Chow dynasty, 1122-1255 B. C., when the marriage rites became more elaborate, we find that the "gift" to the bride's family on the occasion of proposal was a goose, and the "special present" given by the suitor's family or parents was usually a few pieces of silk which were supposed to be used as part of the trousseau for the bride. (See *infra*, p. 41.) From the Chow dynasty to the last days of the late Manchu dynasty (1911) a marriage present in the form of money was generally held in contempt. The note to the clause on "Marriage Present" in the chapter on "Marriage" in the law code of the late Manchu dynasty expressly states that a marriage present in the form of money is "barbarous." (See *Ta-Tsing Leu Lee*. Chinese edition.) In exceptional cases, however, such as the inability of the bride's parents or family to provide the trousseau, the parents or family of the prospective bridegroom gave money for such purpose under the name of "marriage present."

history of the ancient Chinese family, came into existence only after the patronymic family system was fairly well established. It is, therefore, more consistent with the known facts to regard ancestor worship as a result rather than a cause of the break-up of metronymy.

The origin of the basic principles of Chinese family law dates back to the time of Yaou, 2357-2258 B. C., when the family had definitely and finally assumed the patronymic type. In *Shu-king* we find that the Emperor Yaou, who was also the *Chia-chang*[25a] of his own family, not only had promoted love and affection among the nine classes of his family relations, but had commissioned Shun, "General Regulator" of his domain, an office equivalent to the Ministry of the Interior in the modern Chinese cabinet, "to set forth carefully the beauty of the five cardinal duties", (i.e., those between husband and wife, parent and child, elder and younger brothers, the governing and the governed, and between friends), and "to cause them to be universally observed"[26] by the people. The three family duties included in the five cardinal duties, though indefinite and imperfect, constitute the family law of Yaou's time and the nucleus of the family law of succeeding periods.

The Emperor Yaou was succeeded by his minister Shun. Shun adopted bodily the whole set of laws formulated in the reign of his predecessor.[27] These laws were elaborated and made more definite under Shun's régime. He appointed his Minister of Instruction to teach the people that "between father and son, there should be affection; between sovereign and minister, righteousness; between husband and wife, attention to their separate functions; between old and young, a proper order; and between friends, fidelity".[28] In addition to providing public instruction in the five cardinal duties,

[25a] *Chia-chang* means "elder of the family." See also *infra*, p. 48.

[26] *Shu King* (*The Book of History*), translation by James Legge, pt. I, chap. I.

[27] *Ibid*, pt. II, bk. I, chap. V, 19.

[28] *Ibid.* and *Mencius*, bk. III, pt. I, chap. IV, 8.

Shun also appointed Kaou-Yaou as Minister of Crime to institute five punishments (i.e., branding on the forehead, cutting off the nose, cutting off the feet, castration, and death, which might be by one of several modes of execution[29]), "to assist in the inculcation" of the five cardinal duties.[29]

It was upon the three fundamental principles of ancient Chinese family law, namely, that "between husband and wife there should be attention to their separate functions, between father and son, affection, and between old and young, a proper order," that the Chinese family law of succeeding generations was based. The oldest law code of China, the code of the Han dynasty, 178-157 B. C., derived practically all its clauses from the primitive laws and the principles underlying them. The later code of the T'ang dynasty, 618-906 A. D., *i. e.*, the *T'ang Leu*, was derived from the laws of the Han dynasty; and the code of the late Manchu dynasty, *Ta-Tsing Leu Lee*, contains practically all the laws of the T'ang dynasty with only a few slight modifications and several additional clauses.[30] Even the present family law, included in the *Provisional Civil Code of the Chinese Republic*, embodies both the spirit and the letter of the basic principles that "between husband and wife there should be attention to their separate functions, between father and son, affection, and between old and young, a proper order."

Marriage in the days of Yaou and Shun, 2357-2208 B. C., was performed with little ceremony or ritual. The dowry

[29] *Shu King*, pt. II, chap. II, p. 11. Branding and the cutting off of the nose and feet were abolished by the Emperor Wan of the Han dynasty, 178-156 B. C. Castration, however, remained nominally on the statute books until the Suy dynasty, 579-600 A. D. From that time until the late Manchu régime the five punishments were: beating with bamboo, beating with a cudgel, the shorter banishment, the longer banishment and death, which might be by decapitation, strangulation, etc.

[30] See Preface to the Chinese edition of *Ta-Tsing Leu Lee* (*The Fundamental Laws and Subordinate Statutes of the Tsing Dynasty*) and the original draft of *Tu-Tsing Leu Lee*, which has been reprinted in several editions.

given was usually large. There appears to have been no restriction on marriage between a man and woman descended from the same ancestor. An historical instance is illustrative. Yaou gave his two daughters in marriage to Shun. As dowry he bestowed on them "oxen, sheep, storehouses, and granaries".[31] Yaou and Shun were descendants of Hwang-ti and, therefore, Yaou's daughters were Shun's cousins about ten times removed.

This little historical incident caused quite a lot of controversy among Chinese scholars of later periods. Some expressed emphatic doubt that intelligent and enlightened rulers like Yaou and Shun would have permitted an abhorrent marriage between descendants of the same ancestor. Chu Hsi, the famous classical scholar, denounced Sze-Ma Tsien, the Chinese Herodotus, because he thought the latter's genealogy of Yaou and Shun highly inimical to the prestige of two great sages. He probably felt that Sze-Ma Tsien should have twisted the genealogical threads of these two sages so that the marriage incident would have been compatible with their unassailable virtue and sagacity. Others, who believed that ancient sages could do no wrong, actually tried to falsify the genealogy of Shun.[32]

The trouble with these enthusiastic and chauvinistic classical scholars was their ignorance of the social history of antiquity and their distortion of historical perspective. They attempted to judge the conduct of the ancients by the ethical standards of several thousand years later, and inevitably encountered contradictions and inconsistencies. The marriage of Yaou's two daughters to Shun was in no way contrary to the social standards and customs of the time. There was then no law prohibiting marriage between two individuals descended from the same ancestor. Such a law was not

[31] *Mencius*, bk. V, pt. I, chap. I, sec. 3; Shu King, pt. I, "Canon of Yaou."

[32] *Kuo You* (*Narratives of Nations*), chapter on "Chin Yu," sec. 9; and *Chun Ts'iu* (*Spring and Autumn*), "The 9th Year of Chiu Kung."

established until over a thousand years later. Indeed, from the period of the Wu-ti, 2704-2208 B. C., to the Yin dynasty, 1766-1122 B. C., there was no law in China prohibiting marriage between individuals of the same surname or between individuals descended from a common ancestor.[32]

During the Yin dynasty intermarriage was permitted beyond the fifth generation.[33] Even during the Chow dynasty marriage between individuals of the same surname was tabooed only by the noble class; among the lower classes it was quite common.[32]

Parental consent was not required for marriage in the time of Yaou. Shun was married without consulting his parents or announcing to them his engagement. Mencius, on the other hand, asserts that parental consent was required in Yaou's time. Mencius was once asked by one of his disciples, Wan Chang, "It is said in the *Book of Poetry*,—'In marrying a woman, how ought a man to proceed? He must inform his parents'.[34] How was it that Shun married without informing his parents?" To which Mencius replied, "If he had informed them, he would not have been able to marry (because Shun's blind father was 'consistently unprincipled and his stepmother was insincere'[35]). That male and female should dwell together, is the greatest of human relationships. If Shun had informed his parents, he would have foregone the greatest of human relationships and incurred parental displeasure. Therefore, he did not inform them." Wan Chang asked again, "But how was it that the Emperor Yaou gave Shun his two daughters as wives without informing the parents of Shun?" Mencius straightway made answer, "The Emperor also knew that if he informed Shun's parents, he could not have given his daughters to Shun as wives".[36] Elsewhere Mencius has given this explanation: "There are three

[32] *Li Ki Choo Soo* (*The Book of Rites with Commentaries*), note to text on "Marriage."

[34] *She King* (*Book of Odes*), pt. I, bk. VIII, ode VI, st. 3.

[35] *Shu King*, pt. I, chap. III, sec. 12.

[36] *Mencius*, bk. V, pt. I, chap. II, secs. 1-3.

things which are unfilial, and to have no posterity is the worst of them. Shun married without informing his parents lest he should have no posterity. Superior men consider that his noble motive made his failure to inform his parents as commendable as if he had done so''.[37] In other words, Mencius asserts that parental consent was required for marriage in Yaou's time and that Shun's violation of the marriage rule was due to justifiable expediency. Such justification may have been necessary under the *mores* of Mencius' own time,[38] but in the days of Yaou, thousands of years before, it would have been superfluous. It is highly improbable that the rule of parental consent existed in Yaou's reign. We have certainly been able to find no trace of it. The two poetical lines quoted by Wan Chang in his question to Mencius are from an ode which first appeared in the time of King Ch'ing, 1114-1076 B. C., of the Chow dynasty, thousands of years after Yaou's time. This ode is in no sense evidence of the existence of a rule of parental consent in Yaou's time, but probably reflects conditions under the Chow dynasty when the family system was fairly well established and family law was, to some extent, definitely formulated. Wan Chang blundered in measuring the morals of antiquity by the standards of a later period; while Mencius proved himself a poor advocate in denying an unreasonable accusation on the ground that it was a justifiable violation of a rule which did not exist. The manner in which ancient scholars have interpreted the laws and customs of antiquity is often amusing, but seldom reliable.

[37] *Ibid*, bk. IX, pt. I, chap. XXVI, secs. 1-2.

[38] Mencius lived in a time of disorder both politically and socially when human conduct was largely guided by expediency. See *Mencius*, bk. I, pt. II, chap. IV, and bk VI, pt. II, chap. VII, secs. 1-4, inclusive; *cf.* also S. G. Su, Mencius' Sociological Theory, chap. I. Manuscript on file in Columbia University Library.

CHAPTER II

The Ancient Chinese Family System

Passing from what may be called the formative period of Chinese social history, the period from primitive times to the Chow dynasty, 1122-1255 B. C., when the family system was in the making, we come now to a more advanced stage of Chinese civilization.

It is generally said that the climax of the civilization of ancient China was reached under the Chow dynasty. To a large extent, this is true. Besides the establishment of an efficiently working governmental system, many other social institutions assumed definite forms during this period, among them, the family system.

The family system under the Chow dynasty deserves careful and detailed consideration for it has been perpetuated with relatively slight modifications down to the present day; the present system is essentially and fundamentally like its ancient predecessor. The study of the somewhat simpler system of the earlier period should help greatly in the analysis of the system of today.

I. THE FAMILY LIFE OF THE ANCIENT CHINESE

Family life under the Chow dynasty is portrayed as harmonious and happy. Popular sentiment regarding home life is well expressed in folk-songs of the time: "Happy union with wife and children is like the music of lutes and harps." The wife is depicted as frugal and industrious, loving her husband, rejoicing in her family.[1] Among many poems of the period, describing the happiness of family life, the following ode gives a simple picture of a wife of the lower class:

[1] *She King* (Translation by James Legge), pt. I, bk. II, odes II and IV. All quotations from *She King* are taken from this translation.

"How the dolichos spread itself out,
Extending to the middle of the valley!
Its leaves were luxuriant and dense.
I cut it and boiled it,
And made both fine cloth and coarse,
Which I will wear without getting tired of it".[2]

Chinese wives of these days, as many wives of the present day, often had stronger minds and steadier characters than their husbands. It is of interest here to quote two odes which give clear pictures of the home life of the time. The first describes a wife of the common people sending her husband from her side to his hunting, expressing her affection and exhorting him to cultivate virtuous friendships:

1. Says the wife, "it is cock-crow;"
Says the husband, "It is grey dawn."
"Arise, Sir, and look at the night,
If the morning star be not shining,
Bestir yourself, and move about,
To shoot the wild ducks and geese.

2. "When your arrows and line have found them,
I will dress them fitly for you.
When they are dressed, we will drink (together over them),
And I will hope to grow old with you.
Your lute in your hands
Will emit its quiet pleasant tones.

3. "When I know those whose acquaintance you wish,
I will give them of the ornaments of my girdle.
When I know those with whom you are cordial,
I will send to them of the ornaments of my girdle.
When I know those whom you love,
I will repay their friendships from the ornaments of my girdle".[3]

We are here impressed with the wifely tenderness in the conjugal relation.

The second ode describes a marchioness exhorting her husband to rise early and attend to his duties:

[2] *Ibid.* pt. I, bk. I, ode II, st. 2.

[3] *Ibid* pt. I, bk. VII. ode VIII.

"The cock has crowed;
The court is full."
"But it was not the cock that crowed;
It was the noise of the blue flies."

"The east is bright;
The court is crowded."
"But it is not the east that is bright;
It is the light of the moon coming forth."
"The insects are flying in buzzing crowds.
It would be sweet to lie by you and dream,
But the assembled officers will be going home.
Let them not hate both you and me".[4]

It is evident that the wives of this period, as most Chinese wives, shared in the ambition of their husbands, spurred them on to noble enterprise, had great sympathy with them in failure and poverty, helping them to conserve and augment their means.[5] The cheerfulness with which the wife acquiesced in separation from her husband when public duty called him away, was another mark of the unselfishness of her devotion.[6]

Between husband and wife there was deep affection and permanent attachment, as has nearly always been the case among the Chinese. Parental power, great as it was,—and as it always has been in China,—had to give way before the strength of conjugal affection. Before marriage parental influence played a far-reaching role; after marriage it practically ceased to exist. There is an ode voicing the protest of a widow against her parents' plea that she marry again which is pertinent:

".....
He was my mate;
And I swear that till death I will have no other.
O, mother, O, Heaven,
Why will you not understand me?"[7]

[4] *Ibid.* pt. I, bk. VIII, ode I.

[5] *Ibid.* pt. I, bk. III, ode X, sts. 1 and 4.

[6] *Ibid.* pt. I, bk. XI, ode III; bk. V, ode VII; bk. VI, ode III; bk. I, ode III; and pt. II, bk. VIII, ode II.

[7] *Ibid*, pt. I, bk. IV, ode I; also pt. I, bk. X, ode XI.

Such loyalty to the memory of a husband, "rejoicing in her chains," as an English missionary[8] has described it, even against the wishes of parents, has been characteristic of the Chinese wife from earliest times and is still regarded with the highest esteem.

Neither was there, in those early days, any lack of affection, loyalty, and faithfulness on the part of the husband:

"Here we stay; here we stop;
Here we lose our horses;
And we seek for them
Among the trees of the forest.

"For life or for death, however separated,
To our wives we pledge our word.
We held their hands;
We were to grow old together.

"Alas for our separation!
We have no prospect of life.
Alas for our stipulation!
We cannot make it good."[9]

The faithfulness and loyalty of husbands was as great as that of wives. But when the widower remained single because of his devotion to the memory of his wife, his conduct was invariably considered a matter of course and passed unnoticed;[10] while the widow who remained faithful to her

[8] See note to *She King*, pt. I, bk. IV, ode I.

[9] *She King* (Translation by James Legge), pt. I, bk. III, ode VI; also see bk. VI, ode IV.

[10] After the above sentence was written, I came, by happy chance, upon the following report in *The Weekly Review of the Far East*, July 23, 1921, p. 396. Shanghai, China:

"The Ministry of the Interior (in China), according to the *Hsin Shei Hui Pao*, has circulated a telegram to the provinces stating that it is unfair to reward chaste widows and give no encouragement to chaste widowers. The officials are ordered to recommend (for reward) widowers who refuse to marry again at the age of sixty, when their wives died within thirty years of age."

It is singularly significant to note that it took more than 3,000 years for the Chinese people to recognize unfairness toward widowers.

dead husband was esteemed and respected by the public, and a stone archway was erected in her honor. This fact has been generally overlooked in the casual observations of foreigners and even by the Chinese people themselves. If we examine carefully and dispassionately the social life of this early period, we find that love and loyalty between husband and wife were not one-sided as has been generally supposed, but mutual; and that this mutual devotion was not the fulfilling of an obligation imposed by a sense of duty, but natural and spontaneous. This was also true of the relation between parents and children.[11]

The family of these early days, as of the present day, often consisted of parents and their grown sons who, after marriage, were still living under the same roof. For this reason brotherly love and co-operation received great emphasis in the Chinese home. It is interesting to note some of the sentiments of this period regarding brotherly love:

> Of all the men in the world, there are none equal to brothers. On the dreaded occasions of death and burial, it is the brother who greatly sympathizes. When fugitives are collected on the heights and low grounds, they are brothers who seek out one another. When brothers are in urgent difficulties, friends, though they be good friends, have only long sighs. Brothers may quarrel within the walls, but without, they will defend one another from insults, when friends however good they may be, afford no help. When death and disorder have passed and there is tranquility and rest, some, though they have brothers, reckon them not equal to friends. Your dishes may be set in array, and you may drink to satiety but it is when your brothers are all present that you are harmonious and happy, with naïve, child-like joy. Loving union with wife and children is like the music of lutes; but it is in the accord of brothers that one finds lasting harmony and happiness. For the ordering of your family, for your joy in your wife and children, examine this and study it. Will you not find that it is true?[12]

[11] See *She King*, pt. I, bk. IX, ode IV; bk. VI, ode IV; bk. III, ode VII; also pt. II, bk. V, ode VIII.

[12] *She King*, pt. II, bk. I, ode IV; *cf.* also pt. I, bk. X, ode VI; pt. II, bk. VII, ode IX; and bk. IV, ode V.

II. THE GENERAL STRUCTURE OF THE ANCIENT FAMILY

Having reviewed the psychological aspects of the ancient family, we now turn our attention to its structure. It was during this period that the ancient family system, in all its nicety and fixity, was perfected. Its perfection is generally attributed to King Wu and his brother, the Duke of Chow, of the Chow dynasty, 1122-255 B. C.[13]

> He [King Wu, with the advice of his brother, the Duke of Chow] regulated the services to be rendered to his father and to his grandfather before him, giving due honour to the more honourable. He regulated the places to be given to his sons and to his grandsons below him, showing affection to his kindred. He regulated also the observances for his collateral cousins, associating them all in the feasting; he defined their places according to the order of their descent, and his every distinction was in harmony with what was proper and right. In this way the procedure of human duty was made complete.[14]

To make clear the relationships of the ancient Chinese family, we may take, in illustration, a family of this early period, consisting of parents, (A), two sons, (B) and (C), and one daughter, omitting all earlier ancestors and following the growth of the family tree from this segment of the trunk. During the lifetime of the parents, the father was the head of the family. With the help of his wife, he arranged all marriages for the children. After marriage the two sons brought their brides to their parents and they all lived together under the same roof. Daughters given in marriage became, of course, members of their husbands' families. Upon the death of the father, the elder son assumed the headship of the family. He was then called the "honored head," for he was the legal and direct heir and from him the original paternal line continued. The younger brother was called the "small honored head".[15] The position of the "honored head," or elder brother, was higher than that of

[13] See *Historical Records*, "The History of the Chow Dynasty;" also *Chow Le*, chapter on "Sacrificial Ceremony."

[14] *Li Ki* (English translation by James Legge), bk. XIV, sec. 3.

[15] *Ibid*, bk. XIII, sec. 10.

his younger brother only with reference to family relationships and family ancestral worship; it involved none of the property rights of English primogeniture, for in case of division of the family property, every male child received an equal share.

Let us suppose that (B) and (C) both had children. On reaching maturity, the children would be married according to the usual custom. After marriage they, with their wives, would live with their grandparents, their parents, and their uncles and aunts. Such a kin-group constituted a single family.

Upon the death of the "honored head" of the family, *i.e.* (B), his eldest son took his place and became the "honored head," and not the brother of the deceased, (C), or any of the latter's sons. In this way the paternal stem continued unbroken for generations.

After five generations, the younger brother, (C), branched out and became the ancestor of his own line. This branch grew and ramified as the parent-stem had done, but all the minor branchings were connected with the parent-stem.[16]

Every branch of the family, no matter how intricate its ramifications, was always connected with the parent-stem. At first there was the simple family consisting of parents and children; this gradually grew and developed into a large group sometimes occupying a whole village or town, which has been called unscientifically "a clan".[17] This type of family flourished under the Chow dynasty.[18]

When a family had grown into a very large group, a small household or a few male members of the "greater family" would sometimes emigrate to a different locality. There they would establish themselves as an independent household, growing and developing in the same manner as the original group from which they came, but never sever-

[16] *Li Ki* (Translation by James Legge), bk. XIII, secs. 10 and 11.

[17] *Ibid.* bk. XIV, sec. 6. For reasons given in note 56, *infra* chap. IX, we shall use the term "greater family" for the whole family group.

[18] *History of Chinese Customs*, pt. I, chap. III, sec. 5.

ing the ties which bound them to this group. On solemn occasions, such as seasonal sacrifices to the highest ancestors of the original family, or marriages and deaths, they usually sent representatives or, if the distance was not too great, the whole family would attend the ceremonies. Even after thousands of years, when there had been no intercommunication, members of the offshoot family still bore the original surname. Whenever representatives of the two groups encountered one another, whether or not descended from the same ancestor, they regarded themselves as relations and displayed to one another the warmest feelings.

Both the offshoot family and the "greater family" kept carefully compiled historical records. Even today it is not uncommon to find families that possess complete genealogical records and can trace back their descent through thousands of years.

A complete nomenclature was worked out for the complicated, yet well defined, family relationships of this period. Agnatic relationships had a distinct terminology, carried out in the most minute detail. Elder brothers were sharply distinguished from younger; elder uncles, from those younger than the father of the given nephew; direct female ancestors from male; junior sisters, from senior. These distinctions were extended to the smallest details of family relationship, from great-great-grandparents to the sixth-great-grandchildren, including all collaterals.[19] The descriptive terms were fixed and immutable,[20] and determined the different positions of the male and female members of the family.

III. THE DUTIES OF CHILDREN TO PARENTS

The father and mother in this period received identical consideration, respect, and obedience from their children;[21]

[19] For the terminology of the various family relationships, see *History of Chinese Customs*, pt. I, chap. III, sec. 12; and *Li Ki*, bk. I, pt. III, secs. 13 and 14. Also *cf.* footnote 1 *infra* chap. X.

[20] *Li Ki*, bk. XIV, sec. 6.

[21] *Ibid*, bk. XLVI, sec. 6; bk. X, secs. 3 and 13-20; and bk. II, sec. 1, pt. I, 2.

and under no circumstances could a parent ill-treat the child.[22] Children, contemplating marriage, had first to announce the fact to their parents.[23] If a daughter-in-law was not in accordance with them, parents had the right to request their son to divorce his wife. If, on the other hand, the son could not live amicably with his wife, but the parents said, "She serves us well," then the son "should behave to her in all respects as his wife, without fail, even unto the end of her life".[24] The only exception to this rule was when the daughter-in-law was guilty of a serious crime, like adultery, for which an immediate divorce was required by civil law.[25] Neither a son nor a daughter could own separate property; nor had they the right to give away any of the family possessions without the consent of their parents.[26] On the other hand, parents had no right to dispose of any property, by will or otherwise, to any person other than their own children, or, if these were deceased, to their children's children. Upon the death of their parents, children were required to wear mourning for three years[27] (in practice about twenty-five months), and to honor their memory by regularly prescribed sacrifices.[28]

[22] *Ibid*, bk. X, 14: "When sons and their wives have not been filial and reverent, the parents should not be angry and resentful, but should endeavor to instruct them. If the sons and their wives will not receive instruction, parents should then be angry with them. If anger do no good, they can then drive out the son and send his wife away, yet not showing publicly why they have so treated them."

[23] See "Marriage" *infra* p. 40.

[24] *Li Ki*, bk. X, sec. 16; also see *The Li* by the Edder Tai, bk. XIII, chap. XXVI: "The Seven Grounds of Divorce."

[25] *Ibid.*

[26] *Li Ki*, bk. II, sec. 1, pt. III, 4; bk. X, sec. 1, 19.

[27] *History of Chinese Customs*, pt. I, chap. III, sec. 9; and *Li Ki*, bk. II, sec. I, pt. I, 2; bk. XXVII, sec. 17; bk. XXXV, secs, 12-16, Even if the son was in governmental service his superior officer had to discharge him for the three years' mourning of his parents: *Li Ki*. bk. III, sec. V, 12.

[28] See "Ancestor worship," *infra*, p. 39.

CHAPTER III

The Ancient Chinese Family System—*continued.*

IV. THE DUTIES OF PARENTS TO CHILDREN

The duty of parents during this period is a subject that has often been overlooked. Parents had a moral duty and a legal obligation to care for and support their children, even, in some cases, after marriage.

It is of interest and importance to note the methods and principles followed by Chinese parents in these days for the rearing of their children. When a child was born, the father had to fast (the duration of the fast was not specified) to show his respect for the child and his realization of the grave responsibility imposed by its birth.[29] At the end of the third month a day was chosen for naming the child. This was a great family affair. Near relations, and all relations of the same surname, were invited to attend the ceremony, and a feast was provided for the occasion.[30]

The training of children was as follows:

> When the child was able to feed itself, it was taught to use the right hand. When able to speak, a boy was taught to respond boldly and clearly; a girl, submissively and low.
>
> At six years, the child was taught the numbers and the names of the cardinal points. At the age of seven, boys and girls did not occupy the same mat[31] or eat together. At eight, when going in or coming out at a gate or door, and going to their mats to eat and drink, they were required to follow their elders; the teaching

[29] *Li Ki*, bk. X, sec. II, 16.

[30] For this ceremony, see *Li Ki*, bk. X, sec. II, 21, 28 and 29.

[31] The ancient Chinese, like the modern Japanese, did not use chairs, but sat on weed mats which were spread on the floor.

of yielding to others was now begun. At nine, they were taught how to number the days.[32]

At ten, the boy went to a master outside his home.[33] From him he learned the different classes of characters and calculation. He did not wear his jacket or trousers of silk; in his manners he followed his earlier instruction. Morning and evening he learned the behaviour of a youth; he would ask to be instructed in reading the tablets and in the forms of polite conversation.

At thirteen, he learned music, and to repeat the odes, and to dance the *Ko* (of the Duke of Chow). When a full-grown lad, he danced the *Hsiang* (of King Wu), and learned archery and chariot driving.

At twenty, he was capped[34] and taught the different classes of ceremonies. He danced the *tâ-hsiâ* (of Yu), wore furs and silks, and attended sedulously to filial and fraternal duties .....

At thirty, he took a wife and began to attend to the business proper to a man.....

A girl at the age of ten ceased to go out. Her governess taught her the arts of pleasing speech and manners, to be docile and obedient, to handle the hempen fibres and the cocoons, to weave silks and fashion fillets. She learned all woman's work, to make garments, to watch the sacrifices, to serve the liqueurs and sauces, to fill the various stands and dishes with pickles and brine, and to assist in setting forth the ceremonial appurtenances.

At fifteen, she assumed the hairpin. At twenty, she was married, or, if there were reason for delay, at twenty-three. If there were betrothal rites, she became a wife.[35]

It is evident that Chinese parents of those days exercised the most painstaking care in training their children for the functions and duties of manhood and womanhood.

[32] To number the days was a more complicated affair than one might imagine, requiring an acquaintance with all the terms of the cycle of sixty, as well as the more complicated method by decades for each month.

[33] That is to attend private school.

[34] For the ceremony of capping and its significance see *Li Ki*. bk. XL, secs. 3-6; bk. I, sec. I, pt. III, 9; bk. I, sec. I, pt. I, chap. 7.

[35] *Li Ki*. bk. X, sec. II, 32-37. These passages refer to children in families of the upper class; but children of the common people were reared in a corresponding manner, according to the financial circumstances of their parents.

V. RELATIONSHIPS AMONG THE JUNIOR MEMBERS OF THE FAMILY

Legally, the younger sons of a family were on the same footing as their older brothers, but unwritten social and ethical laws imposed upon them the duty of rendering reverence, respect, and obedience to their elders.[36] The eldest son, being the direct propagator of his father's line, had the sole right to make sacrifices to deceased parents and ancestors.[37] If for some extraordinary reason a younger brother had to make sacrifice to the family's ancestors, he must first obtain formal permission from the eldest brother who was custodian of the ancestral tablets and of the temple.[38] When the family property was intact and all the brothers were living together, no brother, not even the eldest, had the right to give away anything belonging to the family. If, for extraordinary reasons, a younger brother was compelled to give away something belonging to the family, "he must first obtain authority for the act from his parents or eldest brother".[39]

The position of the wives of brothers living in the family was in many respects like that of their husbands. Upon the death of their father-in-law, and when their mother-in-law had retired from the active headship of the family, the wife of the eldest son took her place as a sort of regent in the household. But on all occasions of sacrifice and of receiving guests, she had to ask for directions from her mother-in-law; while all the other sisters-in-law had to seek guidance and direction from her. The wife of the eldest son, however, "should not be dilatory, neither should she be unfriendly or impolite to her sisters-in-law, even if they did not assist her." If for some reason the parents-in-law appointed one of the younger sons' wives to manage the affairs of the

[36] *Li Ki.* bk. X, sec. 14.

[37] *Ibid*, bk. XIII, secs. 12 and 14; bk. XIV, secs. 13-15, inclusive.

[38] *Ibid*, bk. I, sec. II, pt. III, 9.

[39] *Ibid.* bk. II, sec. I, pt. III, 4.

family, this wife could not presume to regard herself as on an equal footing with the wife of the eldest son, "walking side by side with her, or giving orders in the same way, or sitting in the same position".[40]

VI. ANCESTOR WORSHIP

The ancient Chinese, like the ancients of most other races, entertained the superstition that the spirits of human beings had a post-mortem existence, and that the departed spirits of friends and ancestors were able to interfere in the affairs of the living. It was, therefore, considered the duty of the living to maintain, by religious rites, communication with the spirits of the dead. Before every event of importance, the spirits were informed and consulted. There are, in the history of ancient China, many instances of such communication. When the Emperor Yaou, having reigned for seventy years, became too old to manage alone the affairs of state, he appointed Shun as vicegerent to help him. The ceremony of appointment was held in "the Temple of the Accomplished Ancestor".[41] When Shun came to the throne, he, in his turn, "went to the Temple of the Accomplished Ancestor" to announce his accession to the throne.[41] In like manner, when Shun selected Yu the Great to help him in governmental administration, "Yu received his appointment at the Temple of the Spiritual Ancestors".[41]

Although ancestor worship, as has already been pointed out, was a result rather than a cause of the transition to the patronymic type of family,[42] it obviously became a powerful factor in the stabilization of the patronymic system. Just how this influence made itself felt, we shall presently see.[43]

[40] *Ibid*, bk. X, sec. 18.

[41] *Shu-King*, pt. II, bk. I, sec. 4.

[42] *Vide supra*, p. 21.

[43] In bks. I and III of the last part of *She King*, there are sacrificial odes which were used in the temple services of the kings under the Shang and Chow dynasties (1766-1255 B. C.). Some of them are songs of praise and thanksgiving, some are

It was customary under the Chow dynasty for people of all classes, including the royal family, to make sacrifices to their ancestors in the first month of each of the four seasons of the year. Different classes of people had different places for the making of sacrifices. The common people could not establish ancestral temples; they were compelled to make sacrifices at the ancestral shrines in their homes. The nobles and high officers, on the other hand, had ancestral temples in which the sacrificial rites were performed. The ruling family offered sacrifices in the royal temple of their ancestors.[44]

Upon the occasion of ancestral sacrifice all relations,—men and women, young and old,—descendants of a common ancestor, gathered together. The sacrificial ceremonies were elaborate.[45] Following the religious rites, there was conviviality and feasting: "They ate to the full and drank to the full".[46] These seasonal sacrifices were in the nature of great family reunions at which the living met and ate and drank together in the presence of the spirits of the dead. Their effect upon family solidarity and stability cannot be overstated.

VII. ANCIENT CHINESE MARRIAGE

During the Chow dynasty the marriage institution developed the complex structure which was handed down without much alteration to the last days of the late Manchu régime. Indeed, the marriage rules and customs of this early period were closely copied for generations and ultimately became the formally enacted marriage laws of China.

songs of supplication, and others, in which we are most interested, relate the circumstances of the service, describing the occasion for it, and the parties present and participating.

[44] *History of Chinese Customs*, pt. I, chap. III, sec. 10; also see *Chow Le, passim.*

[45] For these ceremonies see *She King* (Translation by James Legge), pt. IV, bk. I (II), ode VII; pt. II, bk. VI, ode V; also *Li Ki*, bk. XXII, sec. 18; bk. VII, sec. I, 10 and 11; bk. XIV.

[46] *She King*, pt. III, bk. II, ode II; pt. II, bk. VI, ode V, st. 6; pt. III, bk. II, ode III.

First among the marriage requirements of that period was parental consent. Public opinion of that time expresses itself poetically in the following lines:

"How do we proceed in planting hemp?
The acres must be dressed lengthwise and crosswise.
How do we proceed in taking a wife?
Announcement must first be made to our parents."[47]

If both parents were dead, announcement of the intention to marry had to be made to their spirits in the ancestral temple or at the shrine in the home, and sanction for the union thus obtained.[48]

The second requirement for marriage was a go-between. Whenever two families wished to form a matrimonial alliance, the negotiations had to be carried on by a third party or parties, who might be either a man or a woman, or both, and who made the marriage proposals to the two households. The importance of the go-between is emphasized in the following passage written in this period:

"In hewing the wood for an axe handle, how do you proceed?
Without another axe, it cannot be done.
In marrying a wife, how do you proceed?
Without a go-between, it cannot be done."[49]

Prohibition of marriage between persons of the same surname also originated in this period. "There could be no intermarriage between kin even after a hundred generations. Such was the rule of Chow".[50] Khan Hao, one of the foremost Chinese classical scholars, regards prohibition of consanguineous marriage as the great achievement of the Chow

[47] *Ibid*, pt. I, bk. VIII, ode, VI, st. 3.

[48] *Li Ki*, bk. I, sec. I, pt. III, 37.

[49] *She King* (Translation by James Legge), pt. I, bk. XV, ode V and pt. I, bk. VIII, ode V, st. 4; *cf.* also *Li Ki* bk. I, sec. I, pt. III, chap. 6, sec. 36, and *Chow Le*, section on "Arranger of Marriage."

[50] *Li Ki*, bk. XIV, sec. 8.

dynasty, making clear "for the first time the distinction between man and beast".[51]

What were the reasons for this prohibition? In the time of Chun Ts'iu, near the end of the Chow dynasty, this point was discussed by two writers. One, Shu Peh, gives the explanation that there could be no offspring from a marriage between persons of the same blood;[52] while the other, Shu Chiam, says that a marriage between persons of the same surname would not produce many children.[52] It is probable, therefore, that consanguineous marriage was prohibited for biological reasons.

The age of marriage in this period was for a man, thirty;[53] for a woman, twenty.[54] These ages were fixed by custom, not by statute.[55]

The procedure and ceremony of marriage were very elaborate. We can only note here those features which had a marked influence upon the marriage laws and customs of later periods. The introductory ceremonies were: (1) the proposal, with its accompanying gift;[56] (2) the inquiries about the lady's name; (3) the intimation of approving divination;[57] (4) the receiving of special offerings;[58] (5) the request to fix the date of the wedding;[59] (6) *Chin-yin*, re-

[51] See *Li Ki Choo Soo. passim.*

[52] See *History of Chinese Customs*, pt. I, chap. III.

[53] *Li Ki*, bk. I, sec. I, pt. I, 7.

[54] *Ibid*, bk. X, sec. II, 37.

[55] *History of Chinese Customs*. pt. I, chap. III; also see *Chow Le*, chap. XIII, 55.

[56] The gift was usually a goose. No reason is to be found why the ancient Chinese people used a goose for this purpose.

[57] At the time of the proposal, the family of the prospective bridegroom also used divination.

[58] Offerings varied from 1 to 7 pieces of silk, but two pieces were most frequently used. See *History of Chinese Customs*. pt. I, chap. III.

[59] The family of the prospective bride fixed the marriage date. All negotiations were carried on by the go-between.

ception of the bride by the bridegroom.[60]. All these inquiries, requests, etc., were received at the ancestral temple by the representative of the prospective bride's family.[61] When the marriage date had been fixed, the bridegroom, with purification and fasting, announced it to his ancestors.[62] It is evident that religious sanctions played a large part in the ancient institution of marriage. In addition to the ceremonies mentioned, the bridegroom gave a feast to which his friends in the neighborhood and district were invited and at which he announced his engagement.[63]

All these marriage usages were scrupulously observed by the Chinese of this period. They constituted, indeed, a powerful and irresistible social pressure, reflected in many stories[64] of the time of which the following is a typical example: A lady engaged to be married decided that the ceremonial offerings from the family of the prospective bridegroom were not as complete as custom required. When her fiance wished to meet her and take her to his home, she and her friends refused to carry out the engagement. The fiance brought the case to trial; whereupon the lady composed an ode, asserting that so long as a single ceremonial rule was not complied with, she would not allow herself to be forced from her parents' home:[65]

> "Who can say the sparrow has no horn?
> How else could it bore through my house?
> Who can say that you did not betroth me?

[60] *Li Ki* (Legge's translation), bk. XVIII, p. 172.

[61] *Li Ki*, bk. XLI, sec. 1.

[62] *Ibid*, bk. I, sec. I, pt. III, 37.

[63] *Ibid*. For the elaborate ceremonies of the ancient wedding, see *Li Ki*, bk. XLI, secs. 1-10, inclusive.

[64] See *She King*, pt. I, bk. II, ode VI; bk. IV, ode VIII; bk. VI, ode IX; bk. VII, ode II.

[65] We must keep in mind the ancient belief that every respectable marriage should comply with all the prevailing matrimonial usages; otherwise the marriage was considered equivalent to "taking a concubine," or, in modern phrase, "having a mistress." See *Li Ki*, bk. XLI and XVIII.

How else could you have brought on this trial?
But though you have forced me to trial,
Your ceremonies of betrothal were not sufficient.

"Who can say that the rat has no molar teeth?
How else could it bore through my wall?
Who can say that you did not betroth me?
How else could you have brought on this trial?
But though you have forced me to trial,
I will still not follow you."[66]

Confucius, commenting on these marriage customs, says: "It was by these rules that the ancient kings sought to follow the ways of Heaven, and to regulate the feelings of men. Therefore, he who neglects or violates them may be spoken of as dead, and he who observes them, as alive".[67]

The ancient Chinese family was characterized by its stability and solidarity, by the thoroughness with which it reared and educated the young and safeguarded them from economic handicaps, and, finally, by its sexual purity. Chastity was rigidly enforced among the women. It was, of course, not so rigidly enforced among the men, but a strong social pressure restricted the predatory male and made him relatively faithful to his wife. On the whole, the Chinese family system of this period must be ranked high among the ancient social institutions of the world.

The Chinese family system of today, as we shall see in the following chapters, grew out of this ancient system. Unlike the Roman family, it has followed in its development a continuously smooth, upward trending evolutionary curve, with practically no outstanding "peaks". Fortunately or unfortunately, the ancient Chinese family system was built upon a foundation that subsequent generations found little need to change. The more complex and highly organized system of today has developed slowly and almost imperceptibly during the past thousand years, and still rests upon the ancient foundation.

[66] *She King*, pt. I, bk. II, ode VI (Translated by James Legge).

[67] *Li Ki*, bk. VII, sec. I, 4.

PART II.

The Chinese Family System of Today

CHAPTER IV

The General Structure of the Chinese Family Today

It has often been said that China is made up of families and nothing else. This is, to a large extent, true; the units of Chinese society are not individuals, but families.[1] The family is indeed so fundamental that for thousands of years the Chinese state has been modelled according to the family organization. "Desiring to order well the state, they first regulated their families".[2] This was the conception of government up to the establishment of the Chinese Republic in 1911. Today, when the principle and form of Chinese government are changing, when its organization has been worked out on an entirely new plan, most people in China still use the compound term, "Kuo-chia," meaning literally "country and family", when they really mean the country or nation.

What is a Chinese family? Theoretically it may be defined as a group of kinsfolk consisting of parents and their children living together in a single domestic establishment.[3] Practically it is not so similar to the families of Western nations. In China a married son seldom establishes a new home, but continues to live, with his bride, in the home of his parents. When his sons marry, they and their wives, in turn, live in the same household with their parents and grandparents. Thus a Chinese family may sometimes in-

[1] See *Ta-Tsing Leu Lee* (English translation by Sir G. T. Staunton), sec. 75 and *Provisional Civil Code*, bk. IV, *"Preliminary Explanations."*

[2] *The Great Learning* (one of the Confucian analets), chap. I, 4.

[3] *Provisional Civil Code*, Article 1323, and *Ta-Tsing Leu Lee*, sec. 75.

clude several generations, from the great-grandparents to the great-grandchildren.[4] It is indicative of the harmony and happiness of Chinese family life that the descendants of common ancestors can dwell together in the same household for generations. In modern China, of course, a family comprising many generations is rather hard to find, even in the rural districts. The typical family of the present includes two or three generations.

Every Chinese family, even those no larger than the Western family, has a family head, who is usually the father. The head of the family is called *Chia-chang,* meaning "elder of the family". His position is quite different from that occupied by the Roman *pater familias.*[5] The Roman family, as a legal unit, was based upon *Patria Potestas,* that is, it was held together by the unquestioning subservience of its members to paternal authority.[5] The Chinese family, on the other hand, is founded simply upon consanguineous affinity and the perception of the convenience and utility of perpetuating a natural grouping. In the small family, consisting of husband, wife, and children, the husband, as a rule, is the *Chia-chang.* Upon his death, the mother becomes the *Chia-chang.* In case both parents die, and the surviving male children unanimously decide to continue living together in one family, the eldest brother becomes the *Chia-chang,* provided he is deemed worthy of the position. In brief, the qualifications of a *Chia-chang* are, first, seniority, irrespective of sex, and, secondly, character and ability.

The order in which members of a large family may become the *Chia-chang* is as follows: grandfather, grandmother, great paternal uncles, their wives, father, mother, paternal uncles, their wives, elder brothers, their wives.[6]

[4] Married daughters are not counted because they belong to their husbands' families.

[5] See Maine, *Ancient Law,* pp. 133-138, *et seq.* and McLennan, *The Patriarchal Theory,* chap. I.

[6] *Ta-Tsing Leu Lee,* sec. 88, and *Provisional Civil Code,* Article 1324.

The succession of Chinese family headship is therefore quite different from English primogeniture. In case the legal *Chia-chang* declines to manage the family affairs, either because of old age or for some other reason, his legal successor takes his place.[7] It sometimes happens that the legal successor to the position of *Chia-chang* is very young. His immaturity is regarded as a disqualification and an older member of the family, next in succession, takes his place.[8] This happens where, for instance, the eldest paternal uncle is younger than his eldest nephew, which is not infrequently the case in large families.

The rights and obligations of the *Chia-chang* are noteworthy. First of all, as head of the family, he is responsible for the proper conduct of all domestic affairs;[9] while his seniority confers upon him a peculiar honor and distinction and entitles him to reasonable obedience from his juniors. Under the ancient system he was directly responsible for the good behavior of every member of the family,[10] but has now been relieved of this burden and with it, of course, the right to inflict punishment except upon his own children. As executive and financial head of the family, he has the right to compel all members to turn their entire earnings

[7] *Provisional Civil Code*, Article 1325.

[8] *Ibid*, Article 1326.

[9] *Provisional Civil Code*, Article 1327.

[10] *Ta-Tsing Leu Lee*, sec. 75. Formerly "when a family has omitted to make a required entry in the public register, the *Chia-chang* of the family, possessing, or not, any lands chargeable with contributions to the public revenue, shall be punished . . . When the *Chia-chang* of the family has among his household strangers who constitute, in fact, a distinct family, but omits to make a corresponding entry in the public register, or registers them as members of his own family, he shall be punished . . . If the *Chia-chang* of a family omits to enter in the public register any of the males belonging thereto, who have attained the full age of sixteen, or falsely represents any individual thereof to be under age, aged, infirm or decrepit, so as to evade their liability to the public service, he shall be punished . . ." See also sec. "Evasion

into the common purse[11] to be used for the current expenses of the whole family. He has the additional right to keep in the common treasury all incomes from the family estates, but is not empowered to dispose of any part of the family property for any purpose save the welfare of the whole family, nor arbitrarily to divide the property among the members of the family.[12] He must care for and disburse the funds in a way that will insure the support and maintenance of the whole family. In view of his grave responsibility for the family's welfare, both the old and new law gives him the sole right to admit, or to refuse admission to, new members.[13] If he rules, it is in the family's interest; if he is lord of the family possessions, he holds them in trust for each and every member. The family, in fact, is a corporation and the *Chia-chang* is its manager. It is quite obvious that his position is not at all similar to that of the father in a Western family; much less does his power resemble the Roman *patria potestas.* The *Chia-chang* has no parental power over the members of the family unless they be his own children. The relation between the *Chia-chang* and the members of the family he governs is reciprocal; his obligations, indeed, are more numerous than his rights.

Upon the death of the *Chia-chang,* a family may break up if there be no one who will take his place and assume management of the family's affairs. A family may also be

of Personal Service," and explanatory note to sec. "Fraudulent Evasion of the Land Tax." All these legal responsibilities of the *Chia-chang* for the members of the family are no longer effective in the new law.

[11] *Provisional Civil Code.* Article 1331.

[12] *Ta-Tsing Leu Lee,* sec. 88, second clause: "If, upon the division of the patrimony among junior members of the family, the *Chia-chang* makes an unjust or partial division, he shall be likewise liable to the same punishment" as would be imposed upon the junior members.

[13] *Provisional Civil Code.* Article 1329. *Cf. Ta-Tsing Leu Lee,* secs. 82 and 75.

dissolved during the lifetime of the *Chia-chang* if all the members, or all the sons, desire to establish separate families, provided that permission is first obtained from the *Chia-chang*.[14] When the eldest brother is the *Chia-chang* such permission is not required.[14]

DIVISION OF FAMILY PROPERTY

The break-up of a family necessitates, of course, a division of the family property. Division of family property in China is not so complicated as in Western countries, but the task is by no means an easy one. Where the family comprises several generations, and for years the property has been held in a common fund, disputes arise upon division and their amicable settlement taxes the ingenuity and justice of the ablest judges.

Let us take, in illustration, an imaginary family consisting, before the division of the family property, of the persons indicated in the following diagram:

Father (A)			Mother (B)	
Eldest Son (C)	Second Son (D)	Third Son (E)	Fourth Son (F)	Fifth Son (by concubine) (G)
—	—	—	—	—

(C) 2 grandsons and 2 grand-daughters; (D) 3 grandsons, one of them illegitimate, H., I. and J.; (E) 2 grandsons, one adopted and one illegitimate, K. and L.; (F) none; (G) 1 grandson and 1 granddaughter.

The principles of division of the family property are as follows:

1. If, during the lifetime of the parents, some, or all, of the sons desire to divide the property and establish separate families for themselves, permission must first be obtained from the parents.[15] The father usually has more to say in the matter. If both parents consent, the family property,

[14] *Provisional Civil Code*, Article 1323.

[15] *Provisional Civil Code*, Article 1323; *cf. Ta-Tsing Leu Lee*, secs. 87 and 88.

less a reasonable amount (not specified in the law) for the subsistence of the parents for the rest of their lives, is divided equally[16] among all the sons, C, D, E, F, and G, regardless of the number of children each son may have. In a word, the division of the family property is *per stirpes* and not *per capita.*

If the division takes place after the death of the father, permission[17] must first be obtained from the mother, unless the last will of the deceased orders otherwise, which has happened very rarely in China. The division is then as described above. When the family has dissolved, the mother goes to live with one of her sons, usually the eldest. The son who is to receive her, as a common practice, receives, at the time of the division of the family property, a portion[18] in addition to his legal share for the care of the mother.

2. Suppose that the division of the family property takes place after the death of both parents, and that the value of the property is $25,000. Suppose, further, that at the time of division (D), (E), (F) and (G) are dead. (D) leaves two sons, (H) and (I), and one illegitimate son, (J); (E) leaves one adopted son, (K), and one illegitimate son, (L); (F) had no children and is survived only by his wife; while (G) leaves his wife, one son and one daughter. The division of the family property according to law is as follows:

(C) receives one-fifth of the property, $5,000, since he is one of his father's five sons.

[16] *Provisional Civil Code,* Article 1474; *cf.* also *Ta-Tsing Leu Lee,* sec. 88, second clause.

[17] *Provisional Civil Code,* Article 1463.

[18] Chinese law does not specify what amount of the family property shall go to the mother for her life subsistence. However, the law and immemorial custom require that children shall take care of their parents even when the latter have no property, under penalty of servitude from ten years to life: *Provisional Civil Code.* Article 1450. *Criminal Code of the Republic of China.* Articles 339, 340. Also see *infra,* pp., 79 and 80.

(D)'s legal portion, $5,000, goes to his children and would be divided among them equally except that one of his children, (J), is illegitimate. According to the law,[19] an illegitimate son shall receive only one-half of the portion due a legal heir. Therefore, (H) and (I) each receives, $2,000, while (J), being illegitimate, receives only $1,000.

(E)'s legal portion, $5,000, is divided equally between his adopted son and his illegitimate son, for the law[20] gives an illegitimate son the same rights of inheritance as an adopted son. (Reasons can be found in the remark accompanying Article 1475, *Provisional Civil Code.*)

(F) is survived only by his wife. His legal portion, $5,000, therefore goes to her, provided she is not going to marry again.[21]

(G), although he was a son by his father's concubine, has the same rights of inheritance as any legitimate son.[22] Since he is survived by his wife and children, his legal portion, $5,000, therefore goes to them.

It should be noted here that if there is an unmarried daughter, she may claim a certain sum (not prescribed by law[23]) for marriage expenses, or a "marriage portion", from the family property before it is divided up among her brothers. When the family has dissolved, she usually takes her "marriage portion" and goes to live with one of her brothers, usually the eldest, who, upon the division of the family property, customarily receives an extra portion for her support. Married daughters, regarded as members of their husbands' families, are, of course, excluded from inheritance.

[19] *Provisional Civil Code*, Article 1474.

[20] *Ibid*, Article 1475.

[21] *Ibid*, Article 1467.

[22] *Ibid*, Article 1474; *cf.* also *Ta-Tsing Leu Lee*, sec. 88, second clause.

[23] See *infra*, p. 83.

CHAPTER V

Chinese Marriage

The institution of marriage, like human society, cannot be defined with precision. According to the ancient Jewish conception, marriage is a union of man and woman into "one flesh", and its object, to make for man an "help-meet".[24] Christ himself had this conception of marriage.[25] According to the canonical theory, which was probably derived from the *Bible,* marriage is a state in which "a man and woman have become one flesh".[27] The Christian church believes that marriage is a sacrament having "three characters, sancity, unity, and perpetuity",[28] and its "primary end" is "giving God new worshippers".[28] The conception of marriage embodied in classical Roman law is "exceedingly noble": "Marriage is the union of man and woman, and the inseparable association of their lives";[29] and "marriage is the union of a man and a woman, the association of their lives, the combination of rights divine and human".[30] According to Bentham, "marriage represents to the generality of men the only means of satisfying fully and peacefully

[24] *Holy Bible,* Genesis, 2:18-25.

[25] *Ibid.* Matthew, 19:4-6; Mark, 10:6-8.

[27] Pollock and Maitland, *History of English Law.* vol. II, pp. 3 and 68.

[28] Devas, *Studies of Family Life,* pp. 145-6.

[29] *Justin Inst.*. lib. I tit. IX, 1. Nuptiæ autem, sive matrimonium est viri et mulieris conjunctio, individuam vitæ consuetudinem continens.

[30] *Dig. lib.*. XXIII, tit. II., 1. Nuptiæ sunt conjunctio mari et feminae, consortium omnis vitæ, divini et humani juris communicatio. (These two notes are taken from Fulton, *The Laws of Marriage,* pp. 19 and 20.)

the imperious desires of love''.[31] Starcke says that marriage, in the widest sense, is ''only a connection between man and woman which is of more than momentary duration, and as long as it endures they seek for subsistence in common''.[32] Professor Westermarck, writing ''from a scientific point of view'', says, ''marriage is nothing else than a more or less durable connection between male and female, lasting beyond the mere act of propagation till after the birth of the offspring''.[33]

The ancient Chinese conception of marriage is different from any of these. Confucius summarizes it as follows: ''Marriage is the union (of the representatives) of two different surnames, in friendship and love, in order to continue the posterity of former sages, and to produce those who shall preside at the sacrifices to heaven and earth, at the sacrifices in the ancestral temples and at the altars to the spirit of the land and the grain''.[34] Such a conception seems compatible with the highest ethical standards of modern times.[35]

This ancient conception of marriage still prevails in China. The Chinese people look upon the institution of marriage as inviolable, because it is the basis of civilized society. ''The way of the superior man begins in the relationship between man and woman''.[37] From the social point of

[31] Bentham, *Theory of Legislation*, pt. III, chap. V "Of Marriage," sec. II, *passim*.

[32] *Primitive Family in Its Origin and Development*, p. 13.

[33] *History of Human Marriage*, pp. 19 and 20.

[34] *Li Ki* (Translation by James Legge), bk. XLI, p. 428; bk. XXIV, p. 264.

[35] According to Ellwood, "The primary function of the family is continuing the life of the species; that is, the primary function of the family is reproduction in the sense of the birth and rearing of children. . . . At least we know of no human society in which the birth and rearing of children has not been the essential function of the family. From the sociological point of view the childless family is a failure."—*Sociology and Modern Social Problems.*—chap. III; also see the references given at the end of this chapter, and Gillette, *The Family and Society*, p. 2.

[37] *The Doctrine of Mean* (Confucian analects), chap. XII, sec. 4.

view, marriage is deemed important because it is the source of future generations. "By the united action of heaven and earth all things originate; the ceremony of marriage is the beginning of a line that shall last for a myriad of ages".[38] "If the ceremony of marriage were discontinued, the lives of husband and wife would be embittered, and there would be licentiousness and depravity".[39]

Because of the importance and solemnity of marriage in China, there are stringent marriage requirements, which were first prescribed and enforced by custom and afterwards incorporated in written codes of law. First of all is the requirement of parental consent which has existed in China since the Chow dynasty.[40] The present *Provisional Civil Code,* Article 1338, says: "The consent of parents is required for every marriage". The reasons for this requirement, given in the explanatory note to that article, are substantially as follows: Marriage is one of the most important matters in one's life. It must be considered with great care before the contract of marriage is entered into. Young people, owing to their lack of experience and their consequent incapability of appreciating and weighing the importance of their own actions, cannot be trusted to make reasonable or desirable choices. Therefore, the consent of parents, based upon experience and love, is necessary. Moreover, under the present family system, a son after marriage usually lives with his bride in the home of his parents. The importance of preserving unity and peace within the family circle makes the advice of parents essential to the happy and successful marriage of their son.

There is one exception to this general rule. In case the parental power is exercised by step-parents or foster-parents, and they willfully refuse to give their consent to a legal marriage, the son or daughter, as the case may be, may get

[38] *Li Ki,* (James Legge's translation) vol. I, p. 439

[39] *Ibid,* bk. XXIII, p. 259.

[40] *Ibid,* bk. XXVII, sec. 33; see also *supra,* p. 40.

married without parental consent, provided the family council approves.[41]

Formerly there was a *Chu-hun* (literally translated, Master of Marriage) for each of the two families concerned in every marriage. The old law code holds that the real contracting parties are the *Chu-huns* of the two families, and not the prospective bride and bridegroom. The *Chu-huns* were responsible for all the legal arrangements and complications of a marriage; if the law was violated, the penalty fell upon them, not upon the engaged couple.[42] The choice of the *Chu-hun* was determined by seniority and the degree of relationship to the betrothed. If the paternal grandparents of the prospective bridegroom were living, the grandfather was invariably the *Chu-hun.* If he had no paternal grandfather, his paternal grandmother, not his father, acted as *Chu-hun.* Only when his own parents were the seniors of the family could they act as *Chu-huns.* If none of the lineal ascendants were living, succession to the position of *Chu-hun* was in the following order: paternal uncle, aunt (wife of paternal uncle), paternal aunt (father's sister), elder brother, elder sister-in-law, elder sister, maternal grandfather, maternal grandmother. Failing all these, and this very rarely happened, any of the more distant relations could act as *Chu-hun.*[43]

The present *Provisional Civil Code,* however, makes no provision for a *Chu-hun,* and the Chinese people are rapidly adjusting themselves to the new law which requires only that, if the parents be living, their consent shall be obtained before the marriage contract[43a] is made, otherwise the marriage may

[41] *Provisional Civil Code,* Article 1338.

[42] *Ta-Tsing Leu Lee,* bk. III, "Marriage," particularly sections 107 and 117.

[43] *Ibid.*

[43a] For sample of Chinese marriage contract see "A Pair of Chinese Marriage Contracts." *T'oung Pao Archives,* 5 and suppl., pp. 372, *et seq.* This, however, is an old form and is somewhat different from the form being used today.

be null and void. The contracting parties are the prospective bride and bridegroom, not their parents, and if the marriage is contrary to law the engaged couple is jointly responsible.

Another ancient marriage requirement, already described, was that the proposals of marriage should be made by a go-between,[44] who might be either a man or a woman. (If a man, he was called *mei-jen;* if a woman, *mei-p'o.*) The explanatory note to the section of the old law code specifying this requirement, says that a marriage contract made without a go-between is a private agreement, and that the law will consider it as such.[45] Thus a marriage under the old régime without the go-between had no legal sanction.

The custom of conducting the preliminaries of marriage through the agency of a go-between is very ancient and is still observed to a great extent in China. Some foreign observers hold that it is a survival of marriage by purchase. Their inferences, whether true or false, are of little import. As far as our knowledge goes, the go-between originated in China during the Chow dynasty, 1122-1255, B. C. The *Chow Le* (a sort of law code of the Chow dynasty) tells us that in that period there was a department established by the government for the purpose of regulating marriage. It was under the direction of an officer called *Mei-shi.* The function of this department was to see that marriages among the people were properly arranged and conducted, that proper relations were observed between the sexes, and, in addition, to serve as a sort of matrimonial agency. Every marriage in that time had to be reported to this department and its propriety under the existing laws and customs passed upon. For some reason this department was not continued by the governments of later periods; but doubtless during its existence it had taught the people that a go-between was a desirable agency both for marriage and society. Thus out of governmental control of marriage there evolved the

[44] See *supra.* p. 40.

[45] *Ta-Tsing Leu Lee,* sec. 101; see explanatory note to this section in the Chinese text; also see *Li Ki,* bk. XXVII, *passim.*

private matchmaker. The terms *mei-jen* and *mei-p'o,* meaning, respectively, male and female go-between, are derived from *Mei-shi,* the title of the directing officer of the ancient governmental agency.

The *Provisional Civil Code* provides only that every marriage shall be registered at the office of the local magistrate, otherwise it may be voidable.[46] The general tendency of the Chinese people is to follow the new law implicitly, and the custom of employing a go-between is fast disappearing.

Marriage under compulsion or misrepresentation was also a violation of the old Chinese law. For every marriage the mutual consent of the two families was required.[47] "If either the intended husband or wife is deformed or afflicted with an incurable disease, or is aged, or a minor, or the offspring of a concubine, or a formally adopted child of the same kindred, or one informally adopted of a different surname, these facts must be fully communicated to the other side. If both parties are agreeable, then the go-between shall draw up a formal contract and the betrothal shall be made according to the customary rites".[47]

The present *Provisional Civil Code* follows this old law in principle and spirit. The only difference is that the *Provisional Civil Code* recognizes the two individuals directly concerned as the contracting parties, instead of their families.[48]

Besides these general requirements, there is a list of marriage prohibitions:

(1) A male before the age of eighteen and a female before the age of sixteen cannot marry.[49] The attainment of puberty as a legally prescribed prerequisite of marriage, was not known in China before the enactment of the *Provisional Civil Code;* but early marriage has never been as common or as popular among the Chinese as has been gen-

[46] *Provisional Civil Code,* Article 1339.

[47] *Ta-Tsing Leu Lee.* secs. 101 and 117.

[48] *Provisional Civil Code.* Articles 1341 and 1340.

[49] *Ibid.* Article 1332.

erally supposed. The Chinese have always emphasized the importance of marrying at a suitable age, and, as *Li Ki* points out, the ancient custom of a man marrying at thirty and a woman at twenty[50] has greatly influenced the law-makers of later generations. Of course, marriage often takes place before these ages; but the Chinese people abhor marriages in which there is a great disparity of age, and the marriage of a young girl to an old man or of a young man to an old woman is very rare.[51]

The betrothal of unborn children is also forbidden.[52] Even the law code of the late Manchu régime expressly states: "The practice of betrothing unborn children, which is done by cutting off and exchanging a piece of the garment, is declared illegal".[53]

(2) Marriage between relations, including the wives, concubines or widows of said relations, of all degrees of blood relationship through males, is prohibited.[54] This prohibition also prevents marriage between half-brothers and half-sisters, that is, between persons who have a common father or a common mother. Marriage is permitted, however, between maternal blood relations, even as close as first cousins, provided the bride and bridegroom are of the same generation. Thus one may marry his first cousin on his mother's side, but not the daughter of this cousin.[54] All marriages contrary to these prohibitions, no matter how formally and solemnly concluded, are considered incestuous, and therefore void and subject to criminal punishment. The importance

[50] *Li Ki*, (Legge's translation) vol. XXVII, p. 478.

[51] "The Family Law of the Chinese." China Branch of Royal Asiatic Society, N. S. vol. XXVII, pp. 131-189, *passim*.

[52] *Provisional Civil Code*, Article 1332.

[53] *Ta-Tsing Leu Lee*, bk. III, "Marriage."

[54] *Provisional Civil Code*, Article 1334; also see *Ta-Tsing Leu Lee*, sec. 109.

of this prohibition is attested by the severity of the penalty inflicted by law upon those who ignore it.[55]

(3) Persons of the same surname, descended through males from a common ancestor, no matter how remote, cannot intermarry.[56] This prohibition also includes persons of different surnames, but descended from the same ancestor, as in cases of adoption or where the surname has been changed by legal process. Public opinion of all times has been strongly against marriage between individuals of the same surname, as witness the old proverb: "Not to avoid the same surname in marriage gives occasion for talk".[57] In view of the small number of different surnames in China,[58] with a population of not less than 300,000,000, the prohibition of marriage between persons of the same surname is quite severe. The only exception is that two persons of the same surname may marry if their ancestry can be traced back to two distinct origins. This exception, however, has little effect as there are only a few identical surnames in China of different origin. Despite the severity of this marriage restriction, there is much to commend it. It prevents whatever biological degeneracy may be the sequel of excessive endogamy.

[55] *Provisional Civil Code*, Article 1332; also see *Ta-Tsing Leu Lee*, secs. 108 and 109. However, this prohibition does not apply to marriage between relations by marriage or adoption if the relationship has been broken by divorce or by abrogation of adoption. It may also be noted here that marriage between a man and his deceased wife's sister is not prohibited.

[56] *Provisional Civil Code*, Article 1333, and *Ta-Tsing Leu Lee*, sec. 107.

[57] Giles, *Chinese Dictionary*.

[58] *The Family Surnames*, published at the beginning of Suey dynasty (960-1127 A. D.) contains 438 single and 30 double-surnames, and they are supposed to be the number of surnames existing in China at that time. Giles' investigation sometime ago showed 2,150 surnames and it is quite probable that there may be a few more in China at the present time. See Giles, *Chinese Dictionary*.

(4) Married persons cannot marry a second time unless the first marriage has been legally dissolved.[59] Here again the importance of the prohibition is attested by the severity of the penalty inflicted by law upon persons who violate it.[60]

(5) A woman cannot remarry within ten months after divorce,[61] unless she gives birth to a child before the expiration of that time. The purpose of this prohibition, as stated in the note to the legal article, is, obviously, to prevent any uncertainty as to the child's parentage.

(6) Every marriage must be registered at the office of the local magistrate before it is valid.[62]

(7) Marriage concluded through fraud, deception, or duress is voidable.[63] Exception is noted where the fraud was perpetrated by a third party, such as a go-between, or where the fraud involves only matters of property. For instance, if A marries B because B claims to have a certain amount of property, but after marriage A discovers that B has not the property, the fraud is not a ground for the annulment of marriage.[64]

[59] *Provisional Civil Code*, Article 1335, and *Ta-Tsing Leu Lee*, secs. 103 and 116, fourth clause.

[60] The old law code provides that if a man marries a second time while his first wife is still living, he shall be liable to be punished with 90 blows, and the parties shall be separated. If a wife run away without the consent of her husband and marry another man, she shall be liable to the penalty of death. See *Ta-Tsing Leu Lee, ibid.*

The new *Criminal Code of the Republic of China* (pt. II, chap. XXIII, Article 291) says: "Any person who commits bigamy shall be liable to penal servitude for a term of the fifth degree (1 to 2 years), or to confinement; the party who knows such person to be a married man or woman and who nevertheless consents to the bigamous marriage shall incur the same punishment."

[61] *Provisional Civil Code*, Article 1336.

[62] *Ibid*, Article 1339.

[63] *Ibid*, Article 1345; also see *Ta-Tsing Leu Lee*, secs. 101 and 117.

[64] *Provisional Civil Code* note to Article 1345.

(8) Any person, husband or wife, who commits adultery is forbidden to marry the participator in adultery, even after he or she has been legally divorced.[65] From the modern point of view this prohibition may be regarded as cruel to the individuals directly concerned, but for the stabilization of marriage and family life and for the security and welfare of the children, it is to be highly commended.

According to ancient custom every respectable marriage had six rites. They were: (1) *Na-ts'ai,* giving choice to the girl's family; (2) *T'ung-keng,* exchanging names and dates of birth of the man and girl; (3) *Na-chi,* announcing the favorable result of divination; (4) *Na-pi,* giving silk to the girl's family; (5) *Ch'ing-chi,* requesting that a date be set for the wedding; (6) *Chin-yin,* reception of the bride by the bridegroom.[66]

At present only three of these marriage rites are observed in China. They are: (1) *Na-ts'ai,* a combination of the ancient rites (1) and (2); (2) *Na-pi,* a combination of the ancient rites (3), (4) and (5); and (3) the wedding.[67]

In Western countries a marriage is generally concluded with the wedding ceremony, but in China one of the most important parts of the marriage is the wedding feast which follows it. It is, indeed, regarded as socially indispensable. The number of invitations sent out and the quality of the feast may, of course, vary with the social and financial position of the bridegroom's family, but the feast itself cannot be omitted. Regarding the significance of the marriage feast, *Li Ki* says: "The bridegroom should give a feast and invite his friends and the people of the town in order to emphasize the importance of the distinction between the positions of man and woman".[68] In practice the bride's

[65] *Ibid*, Article 1337; also see *Ta-Tsing Leu Lee*, sec. 117.

[66] *Li Ki* (Legge's translation), bk. XVIII, p. 172.

[67] For information concerning the marriage rites and the wedding ceremony now being observed in China, see *Useful Information on Subjects of Daily Reference* (in Chinese), vol. I, bk. II, published by Chinese Republican Book Publishers, Shanghai.

[68] *Li Ki*, bk. I, p. 78.

family always, or nearly always, also prepares, on or before the wedding day, a feast to which friends and relatives are invited. It is noteworthy that neither the marriage feast nor the wedding ceremony is required by law. They are only definitely prescribed and closely observed customs.

The many requirements and the intricate process of concluding a marriage show how important the Chinese consider the marital relationship.

CHAPTER VI

The Relation of Husband and Wife

As far as our knowledge goes, there was, before the enactment of the present *Provisional Civil Code,* no clear and complete legal definition of the status of husband and wife in China and of their relationship to each other. Even the law code of the late Tsing dynasty contains only a few scattered and inadequate references to the husband-wife relationship. For the most part, custom and tradition,[69] from the beginning of Chinese civilization through thousands of generations, determined the conjugal status, which now for the first time in the social history of China has received adequate legal definition in the new civil code.

The provisions of this code can be better understood by comparison with the old laws and customs. Formerly the wife was under the guardianship of her husband and during the continuance of the union she could, though sharing in the rank and honor of her husband,[70] do practically nothing without his consent. Even the ancient Chinese law,[71] providing that a husband guilty of adultery should be punished by castration, was forgotten or intentionally overlooked by the lawmakers of later periods and the wife thus deprived of all power to demand conjugal fidelity except through the grace of public opinion. On the other hand, if she committed adultery, the law[72] pronounced her a criminal. Through marriage she acquired the right to share in the rank and honors of her husband, the right of a mother over her children, the right of a mistress in the family, and the right to inherit

[69] These traditions and customs are embodied in the *Li Ki.*

[70] See *Ta-Tsing Leu Lee,* sec. 103.

[71] See *Shu King,* pt. I, "Canon of Shun."

[72] *Ta-Tsing Leu Lee,* section on "Criminal Intercourse."

her husband's property, rank or titles after his death.[73] Apart from these she acquired no other conjugal rights during her husband's lifetime; and lost her right of being *sui juris*. She owed her husband implicit obedience. For no reason could she leave the family without his consent. If he chose to change his place of residence she was obliged to follow him. If deserted by her husband, she could not marry again "before the expiration of three years, without first obtaining the sanction of the local magistrate", under penalty of 100 blows. If she married without observing all the formalities and conventions deemed essential to respectable marriage, the law considered her an adulteress.[74]

Being under the guardianship of her husband, she had, in the eyes of the law, no right to possess separate property during the lifetime of her husband. At marriage everything she possessed, even properties inherited from her parents' families or bequeathed by relations subsequent to her marriage, became the property of her husband.[75] Moreover, the husband was not liable for any debt contracted by his wife before marriage. If, for any reason, divorce included, she left her husband's family, she could claim no part of the family property unless stipulation to that effect had been made in the marriage contract.[76]

With all his powers and privileges under the old law, however, the husband could not force his wife into any improper or immoral relation, such as prostitution,[77] nor could he degrade her to the position of a concubine under pain of 100 blows and the necessity of restoring her immediately

[73] *Ibid*, sec. 47.

[74] *Ibid*, sec. 116.

[75] In practice, however, the wife usually kept any earnings she made in outside work done in the home; and it was not uncommon for the husband to refuse to consider the gifts his wife received from her parents as his property.

[76] *Ta-Tsing Leu Lee*, sec. 116.

[77] *Ibid*, sec. 102.

to her lawful position of wife.[78] Furthermore, he could under no circumstances marry again while his wife was living and their union not legally dissolved.[78]

In spite of the relatively low position of the wife under the old law, and particularly of the denial of her right to possess separate property, she had a legal, as well as a moral, claim to maintenance so long as she was a wife and remained in her husband's family. Even after the death of her husband, who might have left no property, his relatives had to support her provided she remained unmarried.

A widow might remarry if she so desired, but the ancient traditions and customs exerted upon her a strong pressure to remain unmarried. If she did remarry, she forfeited all claim to her first husband's estate and the property she had added to it by marriage. If she remained unmarried and in her husband's family, she inherited his titles and emoluments and succeeded to his position in the family organization.[79] It is well known that the Chinese people have always delighted in honoring and respecting the widow. In the old days, the good widow who had properly brought up her children to maturity and faithfully fulfilled her other duties received an imperial reward in the form of a gateway or arch erected in her honor in the community where she lived. These gateways and arches are to be seen in almost every village in China. The widow, moreover, received from the family of her deceased husband the greatest reverence and respect, particularly from her sons who were compelled to divorce their own wives if the latter were disobedient to the widowed mother. As long as she lived her sons had no right to divide the family estate or property among themselves without her consent.[80] Provided she allowed them to do so, all the sons had to contribute in some way to her support, under pain of severe punishment by civil authority.[81] Even

[78] *Ibid*, sec. 103.

[79] *Ibid*, sec. 47.

[80] *Ibid*, secs. 88, 87.

[81] *Ibid*, sec. 180, and *The Criminal Code of the Republic of China*. Article 340.

now it is not uncommon in China to hear of an aged widow managing the family estate at her home with the assistance of several sons, while the other children, living in different localities, receive their orders from her. So much for the relationship between husband and wife under the old régime.

Theoretically the new code bases the relationship between husband and wife upon the authority of the husband which, in turn, is based upon the old principle of *Chia-chang*[51a]; but actually the new code deprives the husband of many powers over his wife. It is interesting to note how the framers of the new code attempted to adapt the old theory of the family system to new conditions, and to see, if we can, how far they succeeded.

On the one hand they recognized the importance of equal rights to the happiness of married life; while, on the other, they realized that an ancient institution like the family could not be suddenly or radically altered without disastrous effects upon society as a whole. Confronted by these two problems, the framers of the new code endeavored to improve the status of the wife. Recognizing in principle the equality of rights between husband and wife, they tactfully explained away the legal limitations imposed upon the latter in the new code by saying that these restrictions were not prompted by any alleged natural inferiority of woman, such as physical weakness or mental inferiority, but by the necessity of having a single directing and controlling will for the creation and preservation of connubial harmony; and, furthermore, that it was fitting, in view of custom and tradition, that this power be vested in the husband.[52] In other words, the new code makes marital authority, not an end in itself, but a means to an end, namely, the peace and harmony of family life, the benefits of which accrue to the wife not less than to the husband.

Article 27 of the new code gives to the husband the right to permit or prevent his wife doing anything outside of the

[51a] See *supra*, chapter IV, pp. 48, *et seq.*

[52] *Provisional Civil Code*, Article 9.

domestic routine. Should she neglect to obtain her husband's consent in making a contract or agreement with any other party, her husband has a right to annul it.[83] This general provision regarding marital power is decisive.

The new code, like the old, gives to the husband the right to compel his wife to live with him and to follow him wherever he chooses to take up his residence.[84]

Thirdly, the husband has the right to annul any of his wife's business engagements if, in his judgment, the nature of the employment is detrimental to the welfare of the home, regardless of whether or not the employment was secured with his consent; but such annulment shall not injure the interests of the third party.[85]

Fourthly, the husband is the master of the house and his wife is merely his representative when dealing with people outside.[86]

Fifthly, if the wife is not legally of age (twenty years), the husband is her guardian.[87]

The new code limits marital power, however, by granting the wife the right to act without her husband's consent under the following conditions:

1. When the husband's interest is in conflict with that of the wife, or *vice versâ.*
2. When the husband deserts his wife.
3. When the husband is interdicted or subject to interdict.
4. When the husband is mentally defective.
5. When the husband is undergoing penal servitude of more than one year.[88]
6. When the wife wishes to request the court to order an interdict upon her husband.[89]

[83] *Provisional Civil Code,* Article 1350.

[84] *Ibid,* Article 1351.

[85] *Ibid,* Article 28.

[86] *Ibid,* Article 1355.

[87] *Ibid,* Article 1353.

[88] *Ibid,* Article 30.

[89] *Provisional Civil Code.* Article 19.

In addition to these rights the new code grants the wife the right to possess separate property. All property which she owned before marriage and all property bequeathed to her or acquired by her after marriage, belongs to her.[90] Her husband may act as administrator of such properties, making investments therewith and applying the proceeds to the upkeep of the family; but should he show any indication of negligence or incapacity to perform his task, the wife may apply for an order from the court depriving him of the rights of administrator and safeguarding her property from ruin at his hands.[91]

Furthermore, the wife, under the new law code, has the right to annul any contract made by her husband which proves detrimental to their common property or to the general welfare of the family, provided such an annulment is not an injustice to the third party.[92]

The old idea that the husband is the supporter and the wife the supported has no place in the new code which is based upon the principle of conjugal equality. The wife bears as much responsibility for the support of the family as her husband.[93]

DIVORCE

The relationship between husband and wife is nowhere more clearly reflected than in divorce laws and customs. As we have already pointed out,[1] mutuality of love and understanding is, from the Chinese viewpoint, the *sine qua non* of the connubial state. Without it, marriage ties are silly and futile and should forthwith be severed.

The Chinese divorce law, both old and new, is based upon this principle. Hence, if husband and wife cannot live together harmoniously and happily because of "incompati-

[90] *Ibid*, Article 1357.

[91] *Ibid*, Article 1358.

[92] *Ibid*, Article 1354.

[93] *Ibid*, Articles 1352 and 1356.

[1] *Supra*, p. 55.

bility of temperament'', and if both parties agree to separate, the marriage may be annulled.[2] Annulment of marriage on these grounds is peculiar to the Chinese. In the United States and England, for instance, marriage is a civil contract and cannot be abrogated by the mere consent of both parties without the intervention of the court. In China, under the old law, there was no limitation on the right of dissolving a marriage by mutual consent[3]; court action was only necessary when husband and wife could reach no agreement. The new law follows the same principle. The reason, according to the note to Article 1359 of the *Provisional Civil Code,* is that when a married couple cannot live happily together, they should not be subjected to the humiliation of giving publicity to private family matters by the necessity of concluding divorce in a court of law.

Divorce, having always been based upon mutual consent, the law code of the late Manchu régime provided that a wife could not obtain a divorce without her husband's consent, and that a husband could not repudiate his wife unless she had broken the matrimonial ties by the crime of adultery or had given him one or more of the ''seven justifying causes''[4] of divorce.

According to the old law, the seven grounds upon which a husband might take action for divorce were: barrenness, wanton conduct, neglect of husband's parents, quarrelsomeness, theft, envy, and inveterate infirmity.[4] Balanced against these ''seven justifying causes'' for a husband to obtain divorce were three ''principles of justice'' that protected the wife from unwarranted divorce proceedings. They were: (1) if the wife had mourned three years for her husband's parents; (2) if the family had become rich since she entered it by marriage; (3) if the wife had no parents living to receive her back.[4] ''Under these conditions, none of the

[2] *Ta-Tsing Leu Lee*, sec. 117; and *Provisional Civil Code*, Article 1359.

[3] *Ta-Tsing Leu Lee, ibid.*

[4] *Ta-Tsing Leu Lee*, sec. 117.

aforementioned causes will justify divorce, and the husband who puts away his wife under such circumstances shall suffer punishment ..... and be obliged to receive her again".[5]

Under the old law a wife could bring action for divorce only under the following conditions: (1) because of incompatibility of temperament; (2) because she was cruelly treated; (3) because she had been deceived by false statements in the marriage contract[6]; (4) because her husband had been, or had become, a leper; (5) because her husband had absconded and had not been heard of for three years.

The new code has more provisions on divorce and makes it even easier for both husband and wife to obtain divorce. It provides that either husband or wife may institute divorce proceedings and obtain a divorce for one or more of the following reasons: (1) bigamy (by either party); (2) adultery (by either party); (3) because one party intends to kill the other; (4) because one of the parties is ill treated or highly insulted by the other thereby making it impossible for them to live together; (5) because the wife ill treats or highly insults the relations of her husband's parents; (6) because the husband is ill treated or highly insulted by the parents or relations of his wife; (7) because either party maliciously deserts the other; (8) because either party has not known the whereabouts of the other for over three years.[7]

The new divorce law, however, is consistent with the new marriage law which requires parental consent and registration at the office of the local magistrate for all valid marriages. The new divorce law requires, first, that if the husband be under thirty or the wife under twenty five, the consent of

[5] *Ibid.*

[6] Impotency as a ground for divorce was not expressly stated in the law but was generally understood to be included by implication under this heading. If, however, impotency should develop after marriage it was not a ground for divorce.

[7] *Provisional Civil Code*, Article 1362.

the parents of both parties is necessary for a valid divorce;[8] and, secondly, that whenever an agreement to divorce is entered into, it must be registered at the office of the local magistrate before it is valid.[9]

Because of the nature of the Chinese family system, the child or children of divorced parents often remain with their father. On this point the new code makes a departure from the old. It provides that, in the absence of definite stipulation to the contrary in the divorce agreement, the father has the right of custody of the child or children, if they are over five years of age; while, if they are under that age, the mother has the right of custody.[10] Under special circumstances, however, the court reserves the right to confer custody upon either party according to their fitness to care for the children, or to appoint a guardian if, in the judgment of the court, neither parent is qualified to look after the interests of the children.[10]

In regard to the property rights of a divorced couple, the new law grants a divorced wife the right to take with her property that belongs to her. "When a divorce is obtained by judicial decree or mutual consent, the property of the woman shall go to her".[11]

In addition to equal rights in the instituting of divorce proceedings, in the custody of children and in property, a wife, under the new law, has, if successful in a divorce suit instituted on proper grounds, the right of alimony.[12] The purpose of alimony, as explained in the note to the legal article, is to provide a divorced wife with the means of sustenance; the amount is conditioned by the husband's social and financial position.[12]

It is obvious that the status of the wife in the conjugal

[8] *Provisional Civil Code,* Article 1360.

[9] *Ibid,* Article 1361.

[10] *Ibid,* Articles 1366 and 1367.

[11] *Provisional Civil Code,* Article 1368.

[12] *Ibid,* Article 1369.

relation has been greatly improved by the new law which gives her more rights and greater power to enforce them. The present divorce law of China, however, has many of the bad, as well as the good, features of the divorce laws of Western countries.[13] The desirability of a divorce law as liberal as that now in force in China is open to discussion. This much can be said with certainty: that, as a whole, the new law is better than the old though there is still much room for improvement.

[13] *Cf.* the French and United States Divorce Laws. See Devas, *Studies of Family Life, passim;* La Grasserie, *Les principe sociologiques du droit civil, passim;* Coudert, *Marriage and Divorce Laws in Europe;* and *Laws of American Divorce, passim.*

CHAPTER VII

The Relationship Between Parents and Children

I. PARENTAL POWER

Before the enactment of the *Provisional Civil Code,* parental power in China was very great, though not so "unlimited" or "despotic" as has been generally supposed. In the new code parental power is still maintained and jealously safeguarded; but if one study carefully the Chinese laws, both old and new, on this point, one will find that parental power is not prescribed as an arbitrary right to be exercised for the pleasure or benefit of the parents but as a means of protecting the best interests of the child. The regrettable failure of casual foreign observers and ultra-progressive Chinese reformers to note this fact, has given rise to many inconsistent, and often contradictory, statements about parental power in China.

Parental power in China can be exercised either by father or mother, but it cannot be exercised by both at the same time. As a general rule, the father, when living and staying at home, supports the child and directs its rearing and education. In some cases, for instance the marriage of the child, the mother also has something to say.[14] Upon the death of the father, or for other extraordinary reasons,[14] the mother assumes parental authority.[14]

So long as the father is the head of the family, he is responsible for its support and for the education of the children;[15] while the mother is responsible for the proper conduct of internal domestic affairs. When the children reach marriageable age, it is the duty, as well as the right, of the parents to arrange matches for them. Sons often marry before they are

[14] *Provisional Civil Code,* Article 1370.

[15] *Ibid.* Articles 1370, 1372 and 1376.

self-supporting and their parents have to support them and their wives. This is one of the defects of the Chinese family system.[16] On the other hand, those sons who are capable of successful business careers have to contribute their earnings to the general expenses of the family, and cannot establish separate homes for themselves without the consent of their parents. The mother, if she is not too old, continues to manage the household affairs, and the daughters-in-law therefore play a rather unimportant part in the family organization. Father and mother have an equal right to demand respect and obedience from their sons and daughters-in-law.

In business transactions and other external domestic affairs, the father, provided he is at the same time the *Chia-chang,* represents the family. He signs all contracts and agreements. All properties and lands are owned by the family in his name; but he cannot dispose of any of the family property, nor even his own personal property, arbitrarily. He can make no will[16a] in the English sense of the word, nor any unjust division of the family property among his children.[17] All his children, married daughters excepted, have a legal claim to the family property of which they cannot be deprived. Disinheritance of a son is permissible only upon the ground of incorrigibility and consequent expulsion from the family. Even in these unusual cases the father cannot act arbitrarily or alone. He must first assemble all his kindred and consult them; and their decision in so serious a matter must be unanimous.

Parental power in China has been greatly misunderstood even by so-called "scientific observers". The author of "Studies of Family Life" believes that "the father's authority over his children is very great among the Chinese; short of

[16] See *infra,* pp. 93, *et seq.*

[16a] "Chinese Wills." *China Review,* vol. 4, pp. 399-400 and vol. 5, p. 69.

[17] *Ta-Tsing Leu Lee,* sec. 88.

life and death, there is scarcely any limit to it; and he is not severely dealt with if his child die under the punishment he inflicts''.[18] A German writer says of Chinese parental power: ''The *patria potestas*[19] over children, whether legitimate or adopted, is unlimited. The father can do with them as he likes; he may not only chastise, but even sell, expose, or kill them. The latter occurs often enough, especially with girls, if the family is too poor to bring them up''.[20]

Let us see whether these statements have any foundation in fact. Polemic argument is out of place in a scientific study, but we may well quote a few sections of Chinese law, both old and new, concerning parental power. The law code of the late Manchu régime, bodily derived from the *T'ang Leu*, the code of the T'ang dynasty, which was, in turn, derived from the oldest code of the Han dynasty,[21] says:

"If a father, mother, paternal grandfather or grandmother chastise a child or grandchild in a severe and uncustomary manner, so that he or she dies, the party so offending shall be punished with 100 blows. When any of the aforesaid relations are guilty of killing such disobedient child or grandchild *designedly*, the punishment shall be increased to 60 blows and a year's banishment. . . . If a father, mother, paternal grandfather or grandmother chastise a son's or grandson's wife, or an *adopted* child or grandchild, in a severe and uncustomary manner, so as to produce a permanent injury, they shall suffer the punishment of 80 blows. If the chastisement produce total disability and irremediable infirmity, the punishment shall be increased to 90 blows, and in every such case the adopted child or their own child's wife shall be sent back to the family whence they were taken".[22]

[18] Devas, *Studies of Family Life*, p. 8.

[19] The analogy of Chinese parental power and Roman *patria potestas* is unwarranted; the former is as different from the latter as the Chinese language is from Latin.

[20] Möllendorff, "The Family Law of the Chinese," *Jour. of the China Branch of the Royal Asiatic Society*, 1892, new series, vol. 27, pp. 131-190, *passim*. See also Huberich, "The Paternal Power in Chinese Law." *Juridical Review*, vol. 14, pp. 378, *et seq.*

[21] *Vide supra*, p. 22.

[22] *Ta-Tsing Leu Lee*, sec. 319. In 1770 the Minister of Justice

The new law also limits parents to the reasonable chastisement of their children;[23] and if a child be guilty of a grave offense "the father or mother having parental rights may, for the purpose of correcting his or her son or daughter, apply to the Court of Justice for the infliction of a punishment not exceeding six months' imprisonment."[24]

Can Chinese parents sell their children, or give their daughters in marriage contrary to the law, as many foreign writers imagine that they can? Again the old law, *Ta-Tsing Leu Lee,* Section 275, answers: "Any person who sells his children or grandchildren against their wishes shall be punished with 80 blows, etc." Neither can parents compel their children, sons or daughters, to marry contrary to the law, under pain of severe penalties.[25] Moreover, Chinese parents are obligated to care for and support their children under pain of penal servitude for a term of from two months to four years according to the nature of the case.[26]

Chinese parental power over the child is legally terminated by (1) the death of the parent exercising the power;[27] (2) by suspension of the parental power of the father under the following circumstances: (a) when his whereabouts are unknown, (b) when he has been put under interdict by action of the court, (c) when he is legally incapacitated;[28] (3) by suspension of the parental power of the mother by re-

in China issued a decree subjecting persons guilty of infanticide to the same penalty as those guilty of intentional killing of an older child. (See Scherzer, *La puissance paternelle en Chine,* p. 17.) Since then infanticide has been regarded by law in the same light as the killing of a grown child.

[23] *Provisional Civil Code,* Article 1374.

[24] *Criminal Code of the Republic of China,* Article 11.

[25] *Ta-Tsing Leu Lee,* secs. 102 and 117.

[26] *Criminal Code of the Republic of China,* Article 339.

[27] *Provisional Civil Code,* Article 1370. After the father's death the parental power goes to the mother

[28] *Ibid.* Articles 1410, 19, 20, 21, 23 and 8.

marriage[29] or divorce;[30] (4) by the death of the child; (5) by adoption of the child by others;[31] (6) by marriage, in case of the daughters.[32]

II. THE POSITION OF THE CHILD

Without going into the ethical philosophy of filial piety,[33] let us, from the legal and practical point of view, examine the position of the child in relation to its parents and to the other older members of the family. According to the old law, a son remained a minor throughout the lifetime of his father. This is no longer in force. Under the new law a child attains legal majority at the age of twenty.[34] The attainment of legal age, however, does not free the child from the obligations of reverence and obedience to its parents, or from the duty of supporting them. Moreover, as previously pointed out, sons cannot establish separate families or divide the family property among themselves without parental consent;[35] neither sons nor daughters can contract valid marriages without consulting their parents in advance;[36] and, if the husband is under thirty or the wife under twenty five, divorce cannot be obtained without the permission of parents.[37] The duty of children to support their parents and grandparents is implicit and explicit. Under no circumstances can they escape or ignore this duty. "Any person who

[29] *Ibid*, Article 1378.

[30] See "Divorce," *supra*, p. 73.

[31] *Provisional Civil Code*, Article 1377.

[32] *Ibid*, Article 1379.

[33] For the essence of filial piety, see *Li Ki* (James Legge's translation), bk. XXI, secs. I and II.

[34] *Provisional Civil Code*, Article 10.

[35] *Ibid*, Articles 1323, sec. 2; and 1373. *Cf* also *Ta-Tsing Leu Lee*, secs. 87 and 88.

[36] *Provisional Civil Code*, Article 1360.

[37] *Ibid*, Article 1338.

abandons any of his lineal ascendants shall be liable to penal servitude for life or for a term of from five to fifteen years'',[38] and ''shall upon conviction be deprived of his civil rights''.[39] Even when China was an absolute monarchy, governmental duty was not a valid excuse for abandoning aged parents or grandparents. ''Any person who, in order to hold an office under the government, absents himself from a father, mother, paternal grandfather or grandmother, who is either upwards of eighty years of age or totally disabled by any infirmity, and has no other male offspring above the age of sixteen to perform the duties of filial piety, shall suffer a punishment of 80 blows.''[40] Even a criminal under sentence of death could, under the old law, be excused by an ''act of grace'' of the emperor to support his aged parents or grandparents, provided he ''has parents or grandparents who are sick, infirm or above the age of seventy years, and who have no other male child or grandchild above the age of sixteen to support them.''[41]

Apart from legal compulsion, Chinese children are taught by precept and example throughout their lifetimes to reverence their parents and to see that they suffer neither want nor sorrow. As a rule the old people in the Chinese family are jealously taken care of by the younger members. This is undoubtedly one of the reasons why the ''Old People's Home'' or the ''Old People's Farm'', or any public institution of the kind, is unknown in China.

Not only must children be reverent and obedient and support their parents while they are living but after their death they must arrange funerals befitting the social position of the family, must observe three years of mourning and ever afterwards repeatedly perform acts of worship. The mourn-

[38] *Criminal Code of the Republic of China*, Article 340.

[39] *Ibid*, Article 433; also see *Ta-Tsing Leu Lee*, sec. 338.

[40] *Ta-Tsing Leu Lee*, sec. 180.

[41] *Ibid*, sec. 18.

ing dress is the outward expression of an heart-felt sorrow for the deceased. From the earliest times public sentiment in China has been so strongly in favor of mourning for relations, particularly for parents, that it was definitely prescribed in the law codes of every period in the history of China until the present civil code. The style of the mourning dress was minutely prescribed in the old laws[42] and was vigorously enforced under the old régime.[43]

A son is also responsible for his deceased father's debts. Public opinion in China dictates that "inasmuch as the son inherits the property of his father, he must assume his deceased father's debts." Actually a son is responsible for his father's debts only up to the amount of property left him by his father; but Chinese children jealously strive to keep unsullied the memory of their parents and invariably pay their parents' debts, even when extremely poor, up to the very limit of their financial capacity.

THE RELATIONSHIP AMONG THE JUNIOR MEMBERS OF THE FAMILY

The respect and obedience due to parents and grandparents are also extended, in some measure, to all the elder relations in the family. This is simply a matter of etiquette and good taste on the part of the younger people. The assertion, often made, that the younger members of a Chinese family are subservient to their elders and that the unrestricted authority of their elders suppresses and sometimes crushes their individualities, is inconsistent with the facts. Any member of a Chinese family, young or old, who achieves success in any walk of life, is always looked up to by all the others with the greatest respect. The child, boy or girl, who leads in his or her studies at school is the pride of the family. It is not uncommon to see elder brothers carrying the lunch pail to school for their younger brothers or sisters and waiting on

[42] See *Ta-Tsing Leu Lee* (Chinese edition), vol. I, first 8 pages.

[43] See *Ibid*, secs. 181, 176, 179, 372.

them during the meal. Elder brothers of poor families, impelled by affection and a sense of duty, often voluntarily forego opportunities for their own education in order to add to the family income and thereby provide educational advantages for their younger brothers and sisters. Younger brothers and sisters in China do respect and obey their elder brothers, but it is not that the elder brother has any divinely given power to compel obedience and respect. These are, rather, expessions of fraternal affection and of the conviction that the greater experience and knowledge of their elder brother justify reliance upon his judgment and guidance. But if the elder brother be a dullard, or in any way unworthy, his position in the family is no higher than that of any of the younger members. All the wives of brothers stand upon an equal footing irrespective of age.

The Chinese genealogical system makes the eldest son the "continuator" of his father's line, but the "continuator" enjoys no special privileges of inheritance. English primogeniture has never had a counterpart in China.[44] Naturally the "continuator" becomes the head of the family after the death of his parents, provided he is mentally, morally and physically fitted for the position and has no living paternal uncle older than himself.[45] If he becomes the head of the family, he holds the common property in trust for the other members, but under no circumstances can he dispose of any part of it without the consent of his younger brothers and sisters.[46] As we have already noted, the responsibility of the

[44] However, the eldest son has the right of custody of the ancestral tablets and of taking the leading part in the rites and ceremonies of ancestral worship. He is, therefore, entitled to that portion of the family property reserved for these purposes. Upon his death these rights pass to his eldest son who, thus, is a more important personage than his uncles in matters pertaining to the worship of their common ancestors, *i.e.*, their parents and his grandparents. *Cf. supra*, pp. 31, *et seq.* and pp. 51, *et seq.*

[45] *Vide supra*, pp. 48 and 49.

[46] *Vide supra*, p. 50.

head of a family is by no means light. Besides taking charge of the family property, it is his duty to look after the general welfare of the whole family. In the old days when there was hereditary succession of ranks and titles, the eldest son assumed the ranks and titles of his deceased father, while the younger sons could inherit no such honors until the eldest son was dead or incapacitated.[47] This special privilege, however, has gone forever, since there are no ranks and titles under the republican form of government.

As we have noted before, as long as either of the parents is living the family remains intact, except under extraordinary circumstances. If both parents are dead, and all the brothers wish to establish separate families for themselves, the family property, less a certain sum[48] for the marriage expenses of unmarried daughters, if there be any, and an additional sum[48] for the upkeep of ancestral worship, is divided equally among the brothers, without distinction.[49] If some of the brothers are dead, their shares go to their children or to their widows, if there be no children, provided the widows remain in the families of their husbands. If any of the deceased brothers is survived neither by wife nor children, his share goes to whoever agrees to assume the deceased brother's duties; for instance, to adopt and bring up a child in order to continue the deceased brother's line. Unmarried sisters usually take their marriage "portions" and go to live with their eldest brothers, who, therefore, upon division of the family property, usually receive an extra sum for the support of these sisters. Although this is not prescribed by law, unmarried sisters are invariably well taken care of by their brothers.

[47] *Ta-Tsing Leu Lee*, secs. 47 and 78.

[48] These sums are fixed by general agreement or by formal decision of the family council, if the parents leave no directions concerning them. No definite amounts are prescribed by law.

[49] For exceptions see *supra*, pp. 52, *et seq.* and p. 76.

CHAPTER VIII

Ancestor Worship

We have seen that the ancient Chinese worshipped their ancestors.[50] The institution of ancestor worship is also an outstanding feature of the Chinese family system of today. According to the doctrine of filial piety, reverence and respect for one's parents endures not only throughout the lifetime of the parents but throughout the lifetime of the child.[51] "While his parents are alive, he reverently cares for them, and, when they are dead, he reverently makes sacrifices unto them".[52] Thus ancestor worship has been perpetuated in China, not primarily for superstitious or religious reasons, as most foreign observers imagine, but as a continuation of respect and obedience to deceased parents and, to a lesser extent, to more remote ancestors.

What is the nature of ancestor worship? In China each rich family has its own private ancestral hall where the ancestral tablets are kept. These tablets are made of wood or stone or marble, according to the financial circumstances of the family, and inscribed thereon are the names, titles, dates of birth and death of deceased ascendants and the names and degrees of relationship of their nearest living descendants. The poor family has, in the main hall of the house, its ancestral shrine wherein are arranged the wooden tablets of the deceased. Worship is usually performed twice every year, on the birthday and the death-day of the departed. The offerings are burning incense and eatable things spread before the tablets; the ceremonies consist chiefly of prostrations and obeisances before the tablets.

[50] *Vide supra*, p. 38.

[51] *Li Ki*, bk. X, sec. II, 2.

[52] *Ibid*, bk. XII, sec. I, 5.

It is quite inaccurate to say that Chinese ancestor worship is mere superstition or that it is merely the effect of a "dread of ghosts" or of an "animistic lottery". A Chinese writer remarks:

> While admitting that in some degenerated cases there has slipped in an unanalysable compound of the secondary fears of gods and ghosts and the primary fear of bad luck, it should be emphatically observed that this form of worship must not be confounded with the primordial magic of the savage tribes, or the refined superstition of the Christian churches.[53]

As far as one can make out, the use of the tablet as an object of worship is not due to the belief that the spirit of the departed resides in it, but rather that it is a symbol to be remembered and respected by the living; and the days set apart for worship are no more "religious" than is remembrance of the dead.

Besides the private ancestral hall and family shrine, every "greater-family"[54] group, as a unit, establishes a common ancestral temple. This temple houses the tablets of the great historical personages of the group, the illustrious ancestors "who have sacrificed their lives for the people as governors or administrators, who have done great philanthropic work, or distinguished themselves in literature and art", and even the illustrious housewives and the exemplary widows, who, after the death of their husbands, have educated their children and brought them up to positions of high rank and fame. The worship of these great personages in the ancestral temple serves as a perpetual inspiration to every member of the group. Each and every member of the group, whether rich or poor, high or low in social position, has equal rights and privileges in the ancestral temple. On the birthdays and death-days of their ancestors, and every year in the spring and autumn, periodical ceremonies of worship are performed in the common ancestral temple by the whole

[53] Kia-Loh Yen, "The Basis of Democracy in China," *Intern. Jour. of Ethics.* 1918, vol. 28, p. 201.

[54] See *infra*, p. 88.

group. In some villages, on these occasions, only the male members of the family, who are of age, are present, while in other smaller villages the entire family attends. The ceremony of worship consists of prostrations and obeisances before the tablets. After the ceremony, which is rather brief, but thereby no less grave and solemn, there is a feast which usually lasts through the whole afternoon. Those present go to their seats one by one, according to age, and eat and drink and enjoy each other's company. Needless to say, such an occasion is more like the annual reunion of a large family than a religious service. Its good social effect upon the whole group is by no means slight.

The ancestral temple of the "greater-family" group, besides serving as a center of cooperative enterprises and of mutual aid, and as a court and public educational center, as we shall see later,[55] also serves as a social center and, needless to say, fulfills the function of a church in Western countries. In it every important event of life is celebrated. Every child born in the group has the date of its birth registered in the family record kept here, and a few months later when the child is given a name, the ceremony is also held in the temple. Every newly wedded couple must come here after the marriage ceremony to pay homage to their ancestors. Here every death must be registered. The ancestral temple is the center of the social life of the "greater-family".

In connection with ancestor worship may be mentioned the visiting of ancestral graves. The memory of departed relations is not only preserved by mourning and the ceremonies before their tablets, but by yearly visits to their graves. Once a year, during the *Ch'ing-ming* festival (the spring festival), on or about the fourth of April, the graves of departed ancestors and relations are visited. Visiting the tomb or grave is called in China either *Ta-ch'ing,* meaning "stepping on the green", *Sun-mon,* "visiting the tomb", or *Pai-fen,* "bowing before the grave". It is somewhat similar to

[55] *Infra,* p. 88, *et seq.*

Decoration Day in the United States, though much more elaborate. It is not uncommon on that day to see vast crowds, ofttimes whole families, going to the graves of their ancestors. A feast is prepared and brought there. The men and boys sweep and clean the graves, cut the grass, plant new trees and trim the shrubs around the graves; while the women and girls prepare the feast, set the tables and arrange seats for worshipping. The ceremony of worship consists of prostrations and obeisances before the graves and lasts only a few minutes. After this ceremony some of the dishes are warmed over in the portable kitchen, and then each person goes to the seat provided for him. There, on the top of the hill, away from strangers, is held the reunion of the whole family, the living and the dead. They eat and drink and enjoy each other's company exactly as at the feast held in the ancestral temple. The beneficial social effect of this convivial gathering of the whole family once a year cannot be overstated.

CHAPTER IX

The "Greater Family" [56]

The "Greater Family", consisting of members of different families of the same surname, occupying a whole village or a part of a village, has, as we have noted before,[57] a common ancestral temple which serves as the center of the social life of the group. It has also its own property, either left by the founder of the original family or accumulated through contributions from the constituent families or special endowments by wealthy members of the group. The income from this property is used for the upkeep of the ancestral temple, for the seasonal sacrifices and the repair of ancestral graveyards. It is also used for a few other purposes such as education, poor relief, etc.

The government of the group is entrusted to a board of elders, of varying number, selected by the whole group from recommendations by the senior members. Usually the board of elders consists of men of mature age and high standing who command the respect of the whole community. The most capable of the board of elders is selected as presiding officer. The position of recording secretary is entrusted to one who has literary ability; and the office of treasurer is invariably filled by the wealthy and highly educated members of the group. They hold office for a definite term. Sub-committees are often appointed for various duties ac-

[56] The difference between a "clan" and a group of Chinese families living together in a community has been ably pointed out by Mr. Kia-Lok Yen, in *International Jour. of Ethics*, vol. 28, pp. 197-219. He uses the term "greater-family" to denote the latter. I am fully in accord with his view on this point and, therefore, propose to borrow that term from him. See also Donnat, "Paysans en communauté du Ning-po-fou." *Les Ouvriers des deux mondes*, tome IV, no. 30, pp. 83-158. Paris. 1862.

[57] *Vide supra*, pp. 32 and 33.

cording to the needs of the group. Members of committees are, as a rule, experts or have special knowledge of the business for which they are appointed.

> Every project, every phase of the intercourse with other groups, every acquisition or disposal of the common property, every loan and the interest on every loan, is strictly recorded and kept in the hall where any member may inspect it if he chooses. At the end of each year, whether it be the end of an administration or not, there is an annual meeting at which the records of all business, especially the financial transactions, are read. Every member is supposed to be present at this meeting, but, in practice, each family sends only one member as its representative, or sometimes it even gives the power of attorney to the representative of some other family.[58]

Some of the constituent families of the "greater family" may be poor, and, as a rule, the well-to-do families cooperate to help them. Sometimes poorer families or individuals are given help from the common property in the ancestral temple. As this common property consists chiefly of land and ready cash, they are privileged to rent the land at a very low rental or to borrow money at a very low rate of interest.

In addition to the use of the common property for these purposes, there is also a special fund, derived either from the income from the ancestral property or from endowments, or otherwise provided by the whole community, for establishing a school in the ancestral temple for the young people of the group. Before the abolition of the old system of public examination, it was quite common to find one or two young people, who had been successful at public or provincial examinations, handsomely rewarded out of the common property and regarded with profound respect by the whole community.

There is in the "greater family" a sort of judicial autonomy. Whenever a dispute between individuals or between constituent families arises, it is referred to the ancestral temple. The board of elders together with representatives of

[58] "The Bases of Democracy in China," *Intern. Jour. of Ethics.* vol. 28, p. 201.

disinterested families serve as arbitrators, and to them the evidence and arguments are presented by the contesting parties. The decision of this body has great weight but the disputants do not have to abide by it. If they are dissatisfied with the findings, the whole matter is taken to the local magistrate for final settlement. As a general rule, however, the contesting parties respect and accept the decision of the elders, even when both sides have to yield a little, for to go outside of the group for a final settlement is to bring disgrace upon the name of the "greater family". Moreover, if the dispute were brought to a local magistrate's court for settlement, it would involve great expense for both parties, and, after all, the magistrate can arbitrate intelligently and justly only with the advice and assistance of the elders of the "greater family".

Members in the group who misbehave themselves are punished by agencies within the group. If the wrong done is insignificant, the wrongdoer is punished by his own parents as soon as the misdemeanor is reported to them. When the offense is serious, the offender is tried by a tribunal composed of the elders. If judged guilty, the offender is either made to kneel down before the ancestral temple and declare his repentance,[59] or he is debarred, for a definite period, varying according to the offense, from participation in ancestral worship and from sharing the sacrificial meat. Heavier punishment is inflicted upon those who continually bring disgrace upon the group by serious crimes; by the concerted action of the elders they are expelled from the group and their names erased from the family records.

The civil authorities seldom interfere with the decisions of the elders. Crimes against the state, however, are not left to the tribunal of the "greater family", nor are they mitigated by the collective responsibility of the whole group. As early as the Ts'in dynasty (255-202 B. C.), a law was

[59] This is regarded as a symbol of the greatest shame, for it implies that the offender has become unworthy to be a descendant of his ancestors.

passed which made the whole "greater family" responsible for a crime committed by any one of its individual members.[60] The first emperor of the Ts'in dynasty was afraid of the solidarity of the "greater family" and aimed this law against it. This law, however, lasted only a score of years; then died and was buried with its maker. In the law code of the late Manchu régime responsibility for crimes committed by junior members of a family rested, to some extent, upon the father or the head of the family, whose negligence or indulgence was believed to be their cause[61]; but though the law still remained on the statute books, it had long since fallen into disuse.

[60] Sze-Ma Tsien, *Historical Records*, vol. V, "History of Ts'in Dynasty," *passim*.

[61] *Ta-Tsing Leu Lee*, sec. 75.

CHAPTER X

Conclusion: Evaluation of the Chinese Family System

Foreign writers, and even some of our Chinese writers who have lately acquired a little Western sociological knowledge, believe that the Chinese family system is primitive. This belief is not based upon a careful study of the actual facts. The Chinese family system, like most modern social institutions, retains some of its primordial traits, but it is far from being primitive. Older than any other existing family system, it has, indeed, undergone an even more complete development than the corresponding institution of occidental countries.

In the Chinese family every relation, near or remote, by blood or marriage, is well defined and has a specific name.[1]

An uncle on the paternal side is known by one name, the husband of an aunt on the same side, by another. The two corresponding relatives on the maternal side have again other names. An uncle who is a brother of the father is known by a name different from one who is a cousin, and that again different from those one, two, or three steps further removed. An older uncle (older than the father) has a different name from a younger one. But for all these there is only one word in English as well as in most other Western languages.[2]

The complexity of the Chinese family system is further

[1] For the different names of relations in the Chinese family, see *China Rev.*, vol. XXI, pp. 15-39. This, however, is not complete. *Cf.* also the terminology of the various family relationships of the Chow dynasty, 1122 B. C., in *History of Chinese Customs*, pt. I, chap. 3, sec. 12; and *Li Ki*, bk. I, pt. III, secs. 13 and 14. Since the above sentence was written, an article, "Chinese Family Nomenclature and Its Supposed Relation to a Primitive Group—Marriage," by H P. W. Wilkinson, B. C. L., appeared in *The New China Review*, June, 1921, vol. III. pp. 159-191, criticising some of the views held by Morgan, McLennan and Starcke regarding the Chinese family system.

[2] *Chinese Political Sci. Rev.*, vol. II, no. 3, pp. 80, *et seq.*

shown by the detailed customs and ceremonies which prevail to this day. In every important family affair, like marriage, the family relationships are strictly observed. "At any great social function, like a wedding or a funeral, the costume, the position, the duty, the order, the kind of present, the manner of expressing congratulation or sympathy, etc., all differ with different relatives. Elaborate rules govern their conduct, and remote though the relations may be, they are different from mere friends".[3]

Moreover the laws of inheritance and succession, and the rights and duties of every member of the family, are well defined and strictly complied with.[4] Thus, in law, in custom, and in language the complex development of the Chinese family system is revealed.

It is obvious that the Chinese family is not so simple an organization as the modern occidental family or so primitive as the Roman type. It is, indeed, in complexity and definiteness, far more advanced than the modern family of Western countries; and from the evolutionary viewpoint it would be far more logical to call the latter, rather than the former, primitive.

This does not mean, as we shall presently see, that the Chinese family system is better in every respect than its Western counterpart. From the standpoint of physical efficiency, the Chinese family system can hardly be compared to the modern occidental family. So complicated, and therefore clumsy, an institution is naturally not devoid of defects, and in some cases these defects are serious handicaps under modern conditions. The social and economic responsibility of each member of the whole family sometimes discourages individual initiative, a trait of character almost indispensable in modern times. What is worse, family solidarity and the consequent safeguards provided against economic distress sometimes virtually encourage individual

[3] *Ibid.* For all these rules, see *Li Ki*, *Ta-Tsing Hoe Tien* and *The History of Chinese Customs.*

[4] *Vide supra*, chapters IV and VII, ii.

members to be indolent and inefficient. Since the property of the family is held in common and as far as possible undivided, only the exceptionally energetic and ambitious trouble themselves to undertake new enterprises. Even the more energetic members are unconsciously affected by bad example; and often they avoid the hardship of new undertakings because they realize that the shiftless and lazy will enjoy the fruits of their toil. Though the more enterprising individuals who are successful in business or in other activities are always looked upon by the whole family with profound respect, this positive incentive is not always strong enough to counteract the negative forces. Furthermore, the average person in a large family hardly dares to run the risk of undertaking a great enterprise, for though his gain benefits all, his loss likewise brings misfortune to the whole family. This is certainly one of the causes that has made great industrial enterprises practically unknown in China till quite recently.

Such are the most serious defects of the Chinese family system. From the social and moral point of view, however, the Chinese family system possesses many good traits which have helped China more than all her other social institutions taken together. First of all, despite its economic defects mentioned above, the Chinese family system has, at the same time, some economic value. It has practically eliminated all the ruthlessness and tragedy from the "struggle for existence" in China. The family property, the means of existence, has always been collective. The father, or head of the family, though theoretically supreme, provides for the material needs of the whole family; while the mother and the women members of the family are responsible for the internal affairs of the household. Every male member must contribute all his earnings towards the support of the whole family, and, of course, has a claim on the earnings of all the others. All the women help in the household work. If all the adult male members are productive, the collective income is usually more than enough to provide a comfort-

able living for the whole family. In some families, however, the women contribute to the support of the family by bringing into the home suitable outside work, like sewing, embroidering, and weaving. Every individual works for the family and not for himself alone. Should any member be crippled or otherwise helpless, all the others must aid him and support him. Pride as well as duty demands this[5]; for it would be a disgrace to the whole family to let him struggle alone or receive help from outsiders. As a rule, Chinese people respect and honor old people, especially the aged members of their own families. Aged parents and relations are jealously taken care of; they are never allowed to suffer want, and always have first consideration in any matter of physical comfort. The benevolent communism of the Chinese family makes unnecessary institutions of public charity.

The Chinese family system also tends to prevent individuals from committing crimes or doing mischief. As a member of a family one is, by blood and marriage, enmeshed in an intricate web of relationships, and one's crimes are fraught with serious consequences for the whole family and for the families connected with it. The effect of this social pressure is very great. Moreover, according to the doctrine of filial piety, the highest duty is "the honoring of our parents",[6] the "chief thought is how, to the end of life, not to disgrace them".[7] "When the parents are dead, and the son carefully watches his actions so that a bad name involving his parents may not be handed down, he may then be said to maintain his filial piety to the end".[8] "He whom the superior man pronounces filial is he whom all the people of his state praise, saying with admiration, 'Happy are the parents who have such a son as this!' "[8]

It should be emphasized here that not only the younger members of the family are deterred from wrongdoing, but

[5] *Criminal Code of the Republic of China*, Article 339.

[6] *Li Ki*, bk. II, sec. 9.

[7] *Ibid*, bk. XXI, sec. 5.

[8] *Ibid*, sec. 11.

even the elder members must constantly keep in mind the social position of the family in the community. If any member, regardless of his position in the family, commit a crime, he is despised and ostracized by all his relations. The influence of filial piety and the peculiar organization and relationships of the Chinese family are no less powerful in controlling individual conduct than the sermon and the Sunday School lesson on the seventh day.

The Chinese family, furthermore, is the best agency for socializing individuals. Every member, from childhood to the break-up of the family, is taught to cooperate, to love, to obey, to serve, to respect the rights of others. In this, the family system has promoted social progress more than any other social institution in China. Some casual observers have pointed a close analogy between the Chinese family system and that of Rome. As we have already shown, the Chinese family is as different from the Roman as the Chinese language is from Latin. The analogy is in no way borne out by the facts. The Chinese family has no *pater familias* exercising absolute power of life and death over his subjects. For the most part, relationships in the Chinese family are reciprocal, whether between parents and children or between the head of the family and the junior members. The Chinese family law and the actual working of the Chinese family system prove this important fact which has been overlooked by most foreign writers. The ambition of most Chinese parents is that their children may become great and useful citizens, the light and glory of the family. Inspired by this incentive, they concentrate all their energies upon the proper rearing of their children. And if the junior members of a family respect and obey their elders, it is because they realize that they can profit from the wisdom and guidance of greater experience and age.

Thus every member of the family learns from childhood to labor for the common good, to respect his elders, to be loyal to his whole family, to love and coöperate with his relations without submerging his individuality in the solidarity of the

group. He is prepared in the family, "the state in miniature" for effective citizenship in the greater state, the nation. It is not too much to say that the organization of the Chinese family, both the single family and the "greater family", based as it is on mutual respect, mutual love and mutual aid, has, despite its many defects, done more for Chinese society and for the preservation of Chinese civilization than any other single institution. Above all, it has laid the foundation and prepared the way for modern Chinese democracy.

It is clear, in the light of our review of the merits and demerits of the Chinese family, that the system, though characterized by many good traits which should be retained, needs improvement to meet modern conditions. Just how the system can be adequately adjusted to changing China, is a subject for another study. Though public opinion in China today favors some change, there are few, if any, who advocate throwing away the old system entirely and constructing a new one upon the Western model. In this attitude are intimations of hope that the good features of the old system may be combined with the good features of the Western family system into the Chinese family system of the future. By careful deliberation and sane social control the system of the future can not only be made superior to the Chinese system of the past, but to the present Western system.

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